

PROCEEDINGS

of a

MILITARY COURT FOR THE  
TRIAL OF WAR CRIMINALS

held at

DUNEBURG, GERMANY

on

FRIDAY, 9 NOVEMBER, 1945.

upon the trial of

JOSEF KRUMHORN

and

44 Others

FORTY - SEVENTH D.A.R.

Transcript of the Official

Shorthand Notes.

1.

(At 0930 hours the Court reassembles pursuant to adjournment, the same President, Members, and Judge Advocate being present)

The accused are again brought before the Court.

THE PRESIDENT: Major Cranfield, I think we had reached the stage yesterday when you were going to introduce into your address the points you wanted to raise on the affidavits.

MAJOR CRANFIELD: Yes; I want to deal with the documentary evidence as a whole, and I would first of all refer the court to page 70 of the Manual of Military Law. In this case a large amount of documentary hearsay evidence and opinion has been let in by the operation of the Royal Warrant, and it is for the court to decide what weight should be afforded to that evidence.

Paragraph 5 at page 70 of the Manual of Military Law says this: "The answer to the question why particular statements, verbal or written, should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following: (1) It assists the jury. (2) It secures fair play to the accused. (3) It protects absent persons. (4) It prevents waste of time. It assists the jury by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements or documents, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused, because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects which that fact is more or less remotely connected".

The English law of evidence although comprised in some parts in statutory form, is, in fact, rules of practice hammered out during the eight hundred years of English courts; and that paragraph in the Manual of Military Law is an admirable summary of the reasons for the rules of evidence. In my submission this court should pick out what is the real evidence and should be slow to consider secondary evidence let in by the Royal Warrant, and the court should only take that into account where there are special reasons for so doing.

An accused is considered innocent until he is proved guilty, but beyond any doubt in a Crown prosecution the case presented against an accused carried with it to start with a certain amount of authority. The reason for that is that in civil cases it is investigated by the Director of Public Prosecutions, and before a court-martial it is investigated by the commanding officer. In this case I ask the court to proceed on the assumption that no proper preliminary investigation has been carried out.

I would refer the court to the case of Klippel. If Klippel came before me as his commanding officer charged with a murder at Belsen in March, and charged with other offences at Belsen between 1st January and 15th April, and he said to me: "At that time I was not at Belsen. At that time I was at Nordhausen" and he told me, as he has done, "I can give you the name of Frau Sochtig living at Niedersachswerfen who can tell you straightaway that I was there during the period in question, and I can also give you the names of other witnesses living at Niedersachswerfen who can corroborate it" (Niedersachswerfen at that time being in the British Zone)

would not I, as that man's commanding officer, have said at once: "We will fetch the witnesses and when they arrive I will question them" ? Then if they had corroborated Klippel's story, I would have gone further into the evidence against him, namely, the affidavit of Jakubowice. That would be a reasonable preliminary investigation, but that was not done.

Take again the case of Barsch. He is charged with offences at Belsen concentration camp as the man in charge of the cookhouse. If he says straightaway to me, as his commanding officer, "I was not there. I was the medical orderly in the Weihnacht Barracks. Dr. Kurzke and Dr. Schmidt, who were both at Belsen at this time and who have, incidentally, been there the whole time, can confirm that I was a medical orderly", would not I, as his commanding officer, have had those two doctors fetched and had his story corroborated and then gone further into the witnesses against him?

Then there is the case of Stofel. One of the prosecution witnesses in his statement says: "I can show you on the route of this journey where the bodies of the people I saw shot were buried". At that time the whole of this route was in the British Zone. Would not I, as his commanding officer, have said: "Very well; I will send you with one of my officers or N.C.O.s. in a truck back along this route and you will point out where these bodies are. I will then have them dug up and taken away and I will attach to your statement a statement by the officer who accompanied you which will corroborate what you say. If you cannot find these bodies, I will attach a statement saying so and that will discount the value of your evidence"? None of those elementary investigations were made. Accordingly I ask the court to give no authority whatever to the case produced by the prosecution, and to proceed on the basis that it is not founded on any preliminary investigation of any kind.

I will go further and will say that from the internal evidence of the affidavits, and the evidence we have had here in this court, the atmosphere at Belsen in which this case was prepared was an atmosphere of "Hang the lot of these SS". You have heard what the accused Schilenoiviez said as to the extraordinary way in which he saw the two witnesses against him, but he was not told what they said, and no attempt was made to sort the matter out to test the accusation in view of his answer. He was not even told what the charge against him was until some days later.

You have heard Colonel Champion say: "I know of no case where an SS man accused asked for a statement to be taken from anyone". I do not suppose he does. I do not suppose any SS man did ask. I do not suppose it occurred to anybody that they should start preparing a statement from these people while the witnesses were available at the time.

I pointed out yesterday that the internal evidence in the affidavits was the improper expression of opinion. The court will remember the paragraphs in Colonel Johnson's affidavit which were struck out at the very beginning of this case despite the wide provisions of Regulation 8. Can the court believe that for one moment Colonel Champion, in his private practice, would have ever dreamed of allowing a deponent in a statement coming before a court trying the question to talk about a mass murder? I say it is perfectly obvious that he would never have done that, and that ordinary care was not taken in this case.

What is the result of allowing these expressions of opinion to be put in affidavits made by young, obviously not very well educated, girls? Is not the result simply to inflame the spirit of revenge and hatred which they already had, and to lead to exaggeration and embroidery which runs right through the prosecution's case?

On the question of documents there is one incidental matter in connection with the statement of the accused Grese, number 9. There are three statements by that accused and there are discrepancies between them. The discrepancies were mentioned by the learned prosecutor in his opening address. When the learned prosecutor sought to have those statements admitted I objected, and I stated that my instructions were that they were not voluntary statements. When the time came for the accused to give evidence, rightly or wrongly, I advised her that the statements should not be mentioned in her examination-in-chief and should only be mentioned if she was challenged about them. Nothing was put to her in cross-examination by the learned prosecutor about these statements and, as a result, when she left the box nothing had been said about them at all.

COL. BACKHOUSE: I think this is the time when I should interrupt my friend to say this. If my friend had, in objecting to the statements, said they were improperly obtained or not voluntary statements, this should have been supported by evidence when the woman went into the witness box. If, however, as my friend now says, he advised his client that the statements should not be mentioned, he could only properly have advised that if he were satisfied in his own mind that they were voluntary statements. If there is going to be the slightest suggestion that these were not voluntary statements, it should have been made in evidence and not now. I think my friend should entirely withdraw the suggestion that they were not voluntary if he advised his client not to mention them in the box.

THE JUDGE ADVOCATE: Are you objecting to Major Cranfield elaborating his argument now?

COL. BACKHOUSE: I am objecting to the suggestion that these statements were not voluntary statements, because at the time they went in my friend objected to them on the ground that they were not obtained voluntarily, but when he puts his client in the box and there is an opportunity of giving evidence to support it, he does not do so; and now says that he advised his client not to do so. What I say now is if he wants to refer to this matter at all he must withdraw that suggestion.

THE JUDGE ADVOCATE: If there is no evidence to show whether it was voluntary or was not, surely it is for the court to decide whether it is voluntary or not. Why must they assume that it is voluntary?

COL. BACKHOUSE: I do not ask that. What I say is that having said the statements were not made voluntarily, and having put his client in the box and saying nothing about it, he should not seek to maintain that position by saying the only reason why she did not give evidence was because he advised her not to.

THE JUDGE ADVOCATE: It is all very difficult, Colonel Backhouse, because you and I have been brought up in law to understand that if any admission or confession goes in, the prosecution have to prove that it was made voluntarily; but under the Royal Warrant apparently we are allowed to take a document without that being proved.

COL. BACKHOUSE: Yes, I am not objecting to that. What I am objecting to is that my friend, in objecting to the statement, said his client would give certain evidence. When, however, his client goes into the box she does not give evidence, and he is now seeking to tell the court that the only reason she did not give evidence was because he advised her not to do so. That, to my mind, seems to be a very wrong way of putting it before the court.

THE JUDGE ADVOCATE: Colonel Backhouse, I want to get the closing addresses completed within a reasonable time. I feel that the defending officers have a difficult and laborious job and I, personally, feel that Major Cranfield should proceed and develop his argument.

COL. BACKHOUSE: As you please. I merely wanted to draw the court's attention to the fact.

MAJOR CRANFIELD: I was endeavouring to be as careful as I could not to over-step the matter, but I think it very likely I have made a mistake. The position, as I understand it, is I have not put the matter to the accused and I cannot therefore suggest any explanation as to these discrepancies. In the same say the learned prosecutor did not put the discrepancies to the accused and, as I understand the position (and I may be wrong) he cannot comment on the matter. All I can do is to refer the court to the documents as they stand in the bundle, and all I wish to point out to the court is that there are three statements. The first one is dated in May and is unsworn and is a general denial. The second and third are both dated the same day and contain substantially the case put forward by the accused in the witness box. There is only one thing I have to say before I leave them. In case any wrong impression has been made, I am only too pleased to say that the original remarks I made about this statement do not refer to the second or third statements, both of which were taken by Colonel Genn.

I should like to make four points in summing-up on the evidence. First of all I say the prosecution witnesses gave the court the private soldier's view of what went on at Auschwitz and Belsen, and what they say must be considered in that light. Secondly, I suggest to the court that these accounts of incidents which have been put forward are very probably a confused telescoping together of the experiences undergone by various witnesses during the whole of their time in concentration camps. I think they have pushed together various happenings and have made one incident out of them.

The second thing is when accusations had to be made at Belsen there were only a limited number of SS personnel to accuse. A large number of them had gone away, and when these people, having suffered so much, were given the opportunity of accusing somebody, then the incident, which, as I say, was probably telescoped, had to be pinned on to one of the people in custody who was there available. When these photographs were shown round the camp and evidence was asked for against one person, then there was a great temptation for these young ill-educated girls to say that was the man, and that, I think, may well be the explanation of the quite obviously wrong identifications which have been made.

The third point is this. How is the court going to approach these affidavits? What weight is the court to put upon the affidavits? I suggest the answer is this. An affidavit should only be accepted by way of corroboration. If it is corroborated by oral evidence, or if it is corroborated by some other proved facts, then that is all right. But an affidavit alone, providing the accused goes into the box on oath and denies it and appears to be reliable, cannot, in my submission, be taken.

The last thing I would mention in that connection is this. The court must take every piece of evidence, consider it, and must accept it or reject it. You cannot take an incident described in the witness box and say: "I do not believe that", then go on to the next one and say: "I do not believe that" and so on and then at the end say: "I did not really believe any of them, but there is a general impression". You must, in my submission, take each incident and you must consider it and say: "I will accept that this is true" or "I will reject it". If you reject it, it goes forever, and it is in no way considered when you come to incident number two; otherwise, all the prosecution has to do is to throw enough mud and some of it must stick. All they need do in that case is to produce half-truths, quarter-truths and one-eighth-truths and say: "Well, we have produced all this; add them up and they come to something". That, in my opinion, is a danger to which the accused here are exposed. The

poverty of the evidence produced by the prosecution is apparent, and should not be allowed. That is all I have to say about the evidence.

How then does the case stand against me? First of all, at Auschwitz, as I said in opening, the charges fall into three parts. First of all, the gas chamber; secondly the ill-treatment; and, thirdly, the specific killings. I am going to deal first of all with the selections for the gas chamber, and I would like the court to bear with me while I do this in a certain amount of detail, because what I am putting forward is on behalf of the other accused as well as my own.

My submission is that the court must first of all decide what are the facts about these selections, and what did happen. Then, having decided that, they must consider what is the legal position and who is responsible and who is not. I shall first of all put forward a version of the facts as has come out of the evidence.

The selections took place at three spots; firstly at the railway station when transports arrived, at which selections the aufscherin did not attend. Volkenrath told us that. The second type of selection was at the hospital, and an aufscherin may have attended that if she was on the roster as the aufscherin on duty. The majority of the selections at which the aufscherin attended were in the camp when the prisoners were formed up outside the blocks. The order for a parade would be received either by telephone in the blockfuhrer's building or verbally from the Oberaufscherin or the lagerfuhrer. When that order was received the whistle would be blown and the blockaltester would parade their prisoners - Starotska tells us the Jews in one place and the Aryans in another - and when they were on parade they would report then present to the aufscherin on duty or to the Rapportiührerin, who would in turn report to the lagerfuhrer or the Oberaufscherin or whoever accompanied the doctor. The prisoners were then marched by their ranks past the doctor. In the case of gas chamber parades, usually only the Jews were marched past, and as they passed the doctor would indicate who was fit and who was unfit and they went off into two groups. Beside the doctor as he did this would be a lagerfuhrer or the senior officer present and in the same place, or along the ranks, would be an aufscherin or SS personnel to marshal the prisoners. One of those aufscherin or SS men would have the duty of taking the numbers of one group or the other, or possibly both groups, and I suggest it may well be at that stage that it would become known to the SS personnel or the functionaries what the object of the parade was.

The majority of the prisoners chosen for the gas chamber were chosen at the railway station when the transport first arrived. That is where the very great majority were selected, and at those selections at the railway station the prisoners had no idea what was happening. At the selections in the camp my suggestion is that the prisoners who were old hands might well get prior knowledge of a gas chamber parade, or might realise soon after it started what was going on, and I refer the court for a moment to the evidence of Stein, volume 9 page 12 of the transcript. I do not put Stein up as a very reliable witness, but this is an incidental matter and she may well be right about this. She said, in answer to the learned prosecutor's question "What were those selections for?" "We did not get very clear news why these selections were made, but from those inmates who were longer there we knew that the younger ones were taken to labour camps to work and the others which we thought to the crematorium". These old lags who got to know what was going on were the people who tried to escape. It is surely obvious that those who tried to escape were very few among the thousands paraded. General knowledge among the people paraded is out of the question, because there would have been a stampede, however many sentries there were.

It could not have been too easy to discover from the procedure that it was a gas chamber parade, because when choosing working parties, as Starotska said, sometimes they took only Jews and on other occasions when they selected the weak or ill people, it was for quarantine or special blocks in another camp, or sometimes they took people with infectious or contagious diseases, such as scabies.

From the evidence it appears that the usual ground for inferring people had been gassed was that they disappeared. In this connection I would refer the court to the evidence of Janicka, volume 40 page 12. She was asked: "Were you aware of the fact that it was a selection for the gas chamber?" (A) "No". (.) "How do you know it now?" (A) "Because after two days people chosen during that selection disappeared and never came again". What I want to point out is that if they had been sent away to a factory or to another camp, the same thing would have happened - they would have disappeared. The court will remember Cecilia Frommer who came here and told us that her brother was selected at Auschwitz, and only since the liberation did it turn out that he had been discovered at Buchenwald, another concentration camp.

We have also had evidence that block 25 was used for scabies cases. When the selection was over the group which was not wanted was returned to the camp, and the other group (sometimes the fit and the unfit) would be sent away. If they were for the gas chamber they were marched off to block 25 sometimes and the evidence is that they went off with the blockaltester. Now they could have had no idea what was in store for them. If they had it would have taken all day to keep them together and get them to block 25.

We have also been told that block 25 was walled off from the rest of the camp, and what went on there seems a little obscure. Some time later prisoners were loaded into lorries and passed through the camp. In regard to that block 25 I want to put this suggestion before the court. It may well be that block 25 was used as a staging block for any party that was to leave the camp after a selection. When a party had been chosen they would obviously have to be kept segregated until they got sent away, otherwise the Germans would never be able to get them together again.

There is a very significant passage in the evidence of Sunschein. She says: "When I passed from Camp A to Camp B I lived in block 25". We have had witnesses who speak of people staying in block 25 for days. If the authorities at Auschwitz 1 decided to have a gas chamber selection, they would not do that unless they knew that the gas chamber was ready to take the people selected. Would they select a thousand people for the gas chamber, put them in block 25, and keep them there for three days? It would be absurd. Why not postpone their selection for three days? Why have people hanging about in block 25? The same people who decided to have a selection ran the gas chamber.

Of course, if the party was selected for a long distance kommando it would be put in block 25, the staging block, and they would eventually go off from the camp on their fatigue; and to an ordinary prisoner moving about the camp they might well think they were going to the gas chamber.

Block 25, walled in, was out of bounds to the aufseherin. That fact I think is clear. Erika Schopf said that she had never seen any aufseherin at block 25. If they were on the parade, Grese, ~~Lebau~~ and Lothe, once the selection was over they would have nothing to do with the prisoners selected.

The last point is the question of the doctor. Everybody seems to say that a doctor was always present. If that is so, one may well ask why did he come? If the prosecution's story is right, that the SS themselves made the selections, why bother to have a doctor? In my submission, the example I gave in opening of the choosing of a squad from the army is a very good illustration of how some of those prosecution statements came to be made. In my submission, those are the facts concerning the gas chamber selections, and on those facts the decision has to be made. Assuming it to be a war crime, which, if any, of the accused are responsible for the killing?

In all crimes the prosecution must prove that the accused intended to commit the crime, and to intend to commit a crime an accused must know what he or she is going. If she does something which in view of her knowledge at the time of the act she can reasonably consider to be an innocent act, then she has not the necessary guilty will to make her a criminal. It is for that reason, as Colonel Smith pointed out, that it is necessary to consider the question of superior orders, and necessary to consider whether the accused could be expected to know International Law, and whether the accused was not bound by her own domestic law.

I should like now to draw an analogy to this gas chamber. Suppose at the time of the battle of Cassino it had been decided in order to eject the Germans from the monastery not to use saturation bombing but to use gas. Supposing it had been decided that gas would be put down by an artillery bombardment. Let us assume, for the purpose of the argument, that the shelling with gas shells was a war crime, and that the gassing of persons at Auschwitz was a war crime. At Auschwitz you had five gas chambers and at Cassino you had five, and many more, gun positions. The war crime was committed at Cassino when the lanyard was pulled and the first gas shell was fired. The war crime was committed at Auschwitz when the tap was turned and the gas was discharged into the chamber.

At Cassino the gun crews fired the guns. At Auschwitz the Sonderkommando did the gassing. Those are the actual perpetrators of the crime. Those are the principals in the first degree. At Auschwitz the gas chamber was supplied with ammunition - prisoners - who came to the gas chamber driven in lorries by such persons as Gura. At Cassino the ammunition came to the gun positions in lorries driven by personnel of the R.A.S.C. At Auschwitz the Lagerfuehrer sometimes took the convoy to the gas chamber; no doubt sometimes he sent an N.C.O. At Cassino the R.A.S.C. platoon commander would sometimes take the ammunition. Sometimes he too would send his sergeant.

Ammunition at Cassino would come from an ammunition dump, possibly part of an FMC. At Auschwitz ammunition came from a dump of prisoners - Berkenau. At the FMC there would be an administrative commander in charge of the dumps as a whole. At Berkenau there was an administrative commander - Kramer. At the FMC the ammunition would be sorted out into categories - gas, H.E., smoke, and so forth - and there would be other dumps of other commodities. At Berkenau the same thing happened. The "ammunition" were sorted out into various categories - gas chamber, working parties, long distance, short distance, etc. At Auschwitz the sorting was done by an expert, Dr. Klein. At the FMC the sorting would again be done by an expert, the R.A.S.C. ammunition officer and ammunition examiner. At Auschwitz Klein would be assisted by general duty personnel, SS men and aufseherin. At the FMC there would be R.A.S.C. personnel, private soldiers, sorting the ammunition. At Auschwitz there would be functionaries - prisoners roped in to assist the SS. At Cassino FMC there might well be Italians brought in to help the R.A.S.C. personnel. At Cassino there would be the CRA to direct the ammunition on to the targets and to decide/what scale the ammunition was to be used. At Auschwitz there was Hoess doing the same thing; above Hoess there was Gluckes, and above Gluckes, who corresponded to our Corps Commander, there was Pohl, corresponding to the Commander-in-Chief, and above him was Himmler, the politician.

In my submission that is the situation and the question to be decided here is of all those people who are responsible and who are not responsible? The test in our view, put forward by Colonel Smith, is that they can only be responsible if they had their will free, and their will was guilty if they had a criminal intent. The court may well think that to arrive at a decision it will be necessary to compile a list, a batting order, with Himmler at the top, running down through Pohl, Gluckes, etc., until one gets right down to the very bottom, some cook or clerk, in the office at Berkenau.

Having compiled one's list, somewhere on that list one will have to draw a line across, and those above the line are responsible and all those below are not.

With regard to where that line goes, I would only say this. If the prosecution suggest the line should be drawn right along the bottom and everyone should be held responsible, surely that is wrong. The principals in the first degree, those who actually committed the crime, were the Sonderkommando. We have seen two of those here as witnesses for the prosecution. They cannot deny that they personally and directly committed the crime. Their only defence can be coercion and lack of intention, but if that applies to them then, in my submission, it applies to the accused, and the mere fact that the accused are Germans and the others are not has got nothing to do with it.

That is all I have to say about the gas chamber.

The second charge against me at Auschwitz is ill-treatment. My case is that it must be judged on the general standard subsisting among all these people. Account must be taken of the punishments handed out officially or semi-officially by the political party; particularly in the case of Lohbauer and Lothe account must be taken - when considering how they behaved to the prisoners - of the punishment which they underwent themselves, far more severe than anything they are accused of here.

Account must also be taken of the difficulties of the accused; the few people in authority compared with the mass of prisoners. Greste, in camp "C" with seven ausserherin with altogether 30,000 - nearly two Divisions - of Hungarian Jewesses. The behaviour of the prisoners, whether it was their fault or whether it was not their fault, may very well have been forced upon them by circumstances, but can anyone doubt that they were difficult to control, that they fought among themselves.

The general conditions, the over-crowding which you have heard of in camp "C", was almost as bad as Auschwitz. Now, sir, I feel that the prosecution may make considerable play with the fact that Kramer and others say that beating prisoners in any degree was against the German Regulations. I am prepared to accept that. What I say is that that German regulation was a dead letter insofar as casual and impromptu striking was concerned. I think a distinction should be drawn very sharply between a deliberate flogging, a deliberate, wanton and cruel flogging, and a quick cut with a stick because the prisoner had done something wrong. I say that in theory any regulation which was against that was a dead letter, and as the prosecution say, it was the accepted thing in concentration camps, accepted by the authorities, accepted by the prisoners, accepted by everybody.

I draw two comparisons with that. First of all, third degree in America is, I dare say, contrary to the American Regulations, but can one doubt that when it is practised it is accepted by the authorities and practised with the approval of the authorities? Under the Hague Convention it is a war crime to deprive a prisoner of war of his personal belongings. But it would be sheer hypocrisy, as we all know, to deny that within an hour of their capture the watches of 90 per cent of prisoners of war have not found their way into the hands of their captors, and the view of the private soldier on that is that if he does not do it somebody else will, and when is he ever challenged on that? My accused are the private soldiers of the concentration camps.

The last thing I would say about ill-treatment is this. Can it be said it is a war crime? You heard Colonel Smith on what is and what is not a war crime, but can it be said that an impromptu beating of a prisoner in a camp is a war crime?

It was suggested that because we have total war then everybody is concerned with the war, but can it be suggested that if one man picks the pocket of another man in Berlin or London during the war that is a war crime? And can it be suggested that because one man assaults another man in a V.2. factory that the mere fact that it is a V.2. factory and thereby connected with the war effort makes it a war crime? If an undesirable alien is imprisoned in England and an offence is committed against him by the warden of the prison during the war, is that a war crime? In my submission, it clearly is not.

They are not members of the S.S., they are civilians, they are not members of the armed forces. How can they commit a war crime unless they do something which comes under the well founded category of committing illegal hostilities? Can the allegation that they beat somebody in Auschwitz be considered illegal hostilities committed by a civilian and thereby bringing them within the ambit of a war crime? In my submission, common-sense says no.

Now with regard to the third charge at Auschwitz, the killings. There are four killings alleged against Grese, one killing against Lobauer, all of them affidavits except one killing against Grese which was produced as an afterthought in re-examination. All those killings have been put to the accused in the witness box and it is for the Court, in my view, to judge one story against the other.

The only point I would make about it is that at Belsen we have heard a lot about shooting in the camp, and at Auschwitz very little. The only suggestion that anybody was shot in the camp at Auschwitz are these accusations against Grese. There are no other accusations against any of the camp staff at Auschwitz that anybody was shot inside the camp.

My case is that Auschwitz, particularly compared with Belsen, was a normally organised, competently run camp, and I do not see any reason why there should have been any case for shooting anybody who tried to escape inside the wire, and I would point out that none of these shootings are corroborated by anybody else. They are all incidents individually disproved to, and there is no corroboration of them at all.

Now Belsen. At Belsen I have got to answer first the charge of ill-treatment, and secondly the general killing by starvation and disease. The ill-treatment is a very minor affair. Grese is charged with one beating and of giving a squad some P.T. and beating them during that. Lothe is charged with nothing at all; Lobauer, I think, is charged with nothing at all.

Now they were only at Belsen a very short time. They arrived together in the middle of March. The camp was in a chaotic condition; disease was everywhere, and I ask you to accept as reasonable and true Grese's story when she says: "I had such a horror of the prisoners that so far from wanting to hit them I wanted to keep away from them as much as possible".

You have heard that owing to the chaotic conditions of the camp there were very few working parties, and my three accused at Belsen were all concerned with working parties. Grese, Arbeitsdienstfuehrin; Lobauer, unter her, Arbeitsdienst; Louie a Capo.

Now with regard to the question of their responsibility for the general conditions at Belsen. My case on that is perfectly simple. I say that what was going on at Belsen during March and April, 1945, was beyond anybody's control; Kramer could not control it, and the matter was quite out of hand. These transports were streaming in; the whole place was hopelessly over-crowded; the whole area was rapidly becoming a battle area, it was well within the range of our air activity, it would be tactically bombed regularly, technically strafed, the whole area all around. Transport and communications must have been absolute chaos, and to attempt to make local purchases of foodstuffs for extra thousands who were coming into the camp, to attempt to get extra doctors to cope with the typhus, was quite beyond Kramer or anybody else on the spot. My accused are one aufscherin aged 21, and two prisoner functionaries in the camp, and I invite the Court to accept the proposition that they are in no way responsible for that.

Now a word about the Kramer gang. It has been suggested that there is a special gang who were brought together at Belsen by Kramer so that he could run Belsen in the same way as he had run Auschwitz. That again is one of these assumptions convenient to the Prosecution that you are invited to draw, but what are the facts? No evidence whatever was adduced by the Prosecution in support of that proposition, and what has been elicited from the Defence?

There are in Germany only a limited number of concentration camps. There is a concentration camp service in the S.S. Towards April, 1945,

various concentration camps were being approached by the Allied armies from both the east and the west, and they had to be closed. The number of concentration camps grew less and less, until Belsen was almost the last. Not unnaturally, the limited number of concentration camp personnel converged on Belsen and it is not astonishing that of the people in the dock a number of them have been together at Auschwitz.

A thing which the Court, in my view, should not forget, is that the accused here are only a very small proportion of the camp staff at Belsen. Those of the accused who are among the camp staff at Belsen, any inference that you are invited to draw from their histories is liable to give a very false picture.

So far as Grese is concerned she told you that the reason she asked to stay at Belsen was because she had her young man working there in the camp, and that was no doubt a very good reason why she wanted to come to Belsen from Ravensbrück. You have been told by Lobauer that when they came from Ravensbrück Grese, Lothe, Lobauer, Ehrlert and Bormann were in that party. When they came they were the last of the prisoners from Ravensbrück and that was the time when the Russians were approaching Ravensbrück from the east.

I have only one word to say about concerted action and the Warrant, and that is this. It cannot be disputed that the Warrant can deal with evidence only, the admission of evidence, and it cannot affect in any way the amount of proof of condonation which must be put forward by the Prosecution to establish a condonation among the accused. The amount of proof which is necessary is nothing to do with the Warrant; it is a matter of general principles as is all the rest of the law in this case.

Klippel came to the Wehrmacht barracks which we call Camp 2. Now yesterday Major Munro said to you that the only time that Hoessler went to camp No. 1 was when he went to see Kramer for orders. Well I do not agree with that. In my view Hoessler did not come under the orders of Kramer and he did not go to get orders from Kramer. He went to Kramer as the senior officer in the S.S., his Service, on the spot, and he went to him for assistance.

In support of that I remind the Court that when he was establishing himself in the Wehrmacht barracks Hoessler went direct to Oberst Harries for water carts, for food and so forth. If Hoessler's party was part of Belsen camp, and if Hoessler was under the orders of Kramer, then Hoessler would go to Harries through Kramer and not independently.

Now what is Klippel's position? He had come from Mittelbau; the transports had been bombed; they had been shot up, and the whole situation in that part of Germany can only be compared to the Dunkirk retreat or one of the retreats from Benghazi, and all the chaos that goes with it.

Klippel belonged to the Verwaltung, the administration of the Dora Headquarters. Hoessler belonged to one of the outside camps at Dora, Klein Bodungen. Klippel's commandant was Hauptsturmführer Brenneis, a Captain, the same rank as Kramer, and a rank above Hoessler. You have heard how Brenneis, with his party, went on by car and arrived at the barracks at Bergen-Belsen. Klippel arrived and reported to Brenneis and was told to help in the food store. That night Brenneis and Krutzer went on to Neuengamme, which was their destination. When they got to Neuengamme they found that it was about to be evacuated and they went off and eventually dispersed and went out of the war altogether.

Now Klippel has told you that the next day he found that his officer and his N.C.O.s. had gone and he was found by Hoessler and he was roped in to work in a cookhouse. At the same time all the guards from Mittelbau also left and Klippel has told you what I would describe as a very

true account of his feelings as a private soldier. He wanted to go too. He was very cross because he had been stopped by Hoessler and he went and hid himself in the barracks for a day.

In my submission the position of Klippel is quite a sensible one; quite a real one. He was nothing to do with Hoessler. He was a private soldier in the S.S. and Hoessler was an officer in the S.S., and if, in a situation like this, with his unit in disruption, he is told by an officer to stay behind and to do a job of work, then he has not got very much option. But to suggest that he was part of Hoessler's staff, part of Hoessler's unit is, in my submission, wrong.

To go further, and say that he was anything to do with Kramer or part of the staff of Bergen-Belsen camp is, in my submission, fantastic.

Would it not be a reasonable thing to find at Dunkirk in 1940 a mixed party of gunners, Armoured Corps, R.A.S.C., and a few infantrymen, all of whom had been picked up by an Infantry officer on the way back, all of whom had been got together as a temporary unit by an Infantry officer on the way back in the retreat? But would anybody suggest that when they arrived at Dunkirk that because the officer was in the Cameron Highlanders that Gunner Brown, one of the party, had become a private soldier in the Cameron Highlanders? In my submission the two cases are an absolute parallel.

That concludes my argument in this case, and I am obliged for the patience with which the Court has listened to me, and I apologise for the laboured way in which the argument has been presented.

I believe it is a fashionable thing in cases where capital offences are alleged to remind the Court that the lives of the accused are in their hands, but in my view when we have emerged from a war in which we have seen a number of our friends killed in far different circumstances, that is not a suitable way to approach a military Court. I agree with what Colonel Smith said the day before yesterday. The fate of these nonentities in the dock, a Captain, a Lieutenant, a Sergeant-major, a handful of N.C.O.s and private soldiers, all of them very much line of communication troops, and a number of women, is not, in my opinion, of importance.

The issue in this case is, in my submission, shortly this. Should this Court, as do all Courts who dispense justice in England, detach itself completely from all prejudices, all politics, all matters of race and nationality, should it ignore all fear or pressure of authority or public opinion, in my submission it should consider the evidence and consider the question of a conviction in just the same way as if the accused were not Germans but were British soldiers. That, in my submission, is the issue before the Court, and I invite the Court to accept that, and nothing short of that, as its duty.

CAPTAIN ROBERTS: May it please the Court. I appear for the two accused Oscar Schmitz, No. 14, and Karl Francioh, No. 16.

Before I start my address there is one thing I would like to say, and it is this. I am the fifth Defending Officer to address you, and although we have as well as we can tried to co-ordinate our speeches, what I have to say must inevitably, to a certain degree, repeat what has already been said, but I assure the Court that I will keep that repetition to the minimum.

I raise that now because the first part of my argument concerns something which has already been mentioned by two of my learned friends, namely, what is meant by that extremely obscure regulation which the Court has spent so much time considering, Regulation 8(2).

The learned Prosecutor in his opening address said this at page 25 of the transcript of the first day's proceedings: "I shall ask the Court to view the evidence as a whole and I shall ask the Court to say that each must bear his responsibility not only for the actions of his own hand but for the actions of this criminal gang who were working together. Nevertheless, lest there be the slightest shadow of doubt, no person has been brought before this Court against whom the Prosecution will not produce some evidence of personal acts of active and deliberate cruelty and, in many cases, individual murder. By all means if you view these separate acts separately you must, of course, when coming to your verdict decide each individual case, the case against each individual accused, whether he is guilty or not, but in considering the separate evidence of these individual acts or cruelty I ask the Court to bear that in mind not only as individual acts, but as acts of one of the members of this group, which is evidence not only against himself but again every single one of the persons who were working in that camp as part of that group taking part in this concerted ill-treatment".

Both my accused are concerned only with the Belsen charge, and it appears to me, from that paragraph which I have just read, that any member of the S.S. and any prisoner in any position of authority who was in Belsen for whatever period of time, no matter how short, was a member of the staff of Bergen-Belsen concentration camp, and responsible for the well being of the persons interned there, and further, that such people formed a group within the meaning of Regulation 3(2) under the Royal Warrant and that this group participated in what the Prosecution has called the concerted ill-treatment of the internees.

I do not propose to go at all into the question of whether these people did in fact form a group, nor whether they were responsible for the well being of these internees. I propose to go straight to what I consider to be the root of the problem, and that is these two words "concerted action".

Fifty-three days ago the word "concert" was defined in this Court as meaning "plan", "contrive", "pre-arrange", and with respect I would remind you of that definition now, because it does seem to me that upon the construction which is put upon that one word depends the meaning of Regulation 3(2), and upon the meaning of that Regulation stands or falls the whole of the Prosecution's case in regard to the joint responsibility of the accused for the alleged war crime that occurred at Belsen concentration camp.

It is to my mind quite clear from what the learned Prosecutor said when replying to the Defence's applications for separate trial - that was also on the first day of this case - that the Prosecution are trying to maintain that common action is the same as concerted action.

I will read you two short passages which the learned Prosecutor said on that occasion: "I ask the Court to say that there is ample evidence on which the Court can draw the overwhelming inference that this was a common action by all these people". A few lines later he says: "I ask the Court to regard the application as a whole as being one which must fail on the ground that there is ample evidence on the summary that there was concerted action by those people at Auschwitz and Belsen".

In my submission, one of the basic rules of construction is what words should be construed according to their normal meaning. If that normal meaning is given to them and the document as a whole makes sense, then that normal meaning is the correct meaning to be put on those words.

One should not attempt to give another meaning to those words either on the ground that that other meaning is what was intended by the

draughtsman, nor on the ground that that other meaning is better suited to one's purpose, and it is my submission that if it was intended that common action should be the substance of this Regulation, then the words "common action" would have been used.

Since these words "concerted action" do appear in this Regulation, then I submit that the Court must construe these words according to their normal meaning, and not in such a way as the Prosecution suggests.

In my view, whatever meaning is put upon the words "concerted action", that meaning must imply two things, firstly there must be some prior planning with a view to a definite end; secondly there must be full knowledge of the plan and of the end in view by those carrying it out.

The obvious example of concerted action, but none the less a good one, is that of an orchestra. There each performer in that orchestra has what is termed, I believe, a score. He not only knows which notes he has to play, but also what the other performers are playing and when. The score itself one can compare with the plan, and the music which the whole orchestra produces as the definite end which the plan had in view.

Now I ask you to consider in contrast to that the concentration camp at Belsen. To my mind, from the scenes which have been so graphically described to you by Mr. Le Druillenec and by Brigadier Glyn Hughes, it is quite obvious that here was chaos and disorder on a colossal scale; quite the reverse from concerted action, and it would be difficult to find anywhere a clearer example of un-concerted action.

In my submission, in order that this what occurred at Belsen should have been the result of concerted action, it would have been necessary, when each member of the staff arrived at Belsen, that something like this should have taken place. He would have been told: "Here in this camp we mean to kill as many people as painfully as possible. To that end we have introduced typhus into the camp; to that end we have, with the co-operation of the Royal Air Force, ensured that prisoners receive little food and no water; to that end we are asking all the other camps in the district to pour as many prisoners as possible into this camp, will you not become a partner with us in this joint enterprise".

Now there is no evidence of any such thing or anything like it ever occurring at Belsen.

I would like to read a further extract from the learned Prosecutor's speech when he opened his case: "The case for the prosecution is quite a definite one, it is that the people concerned are all members of an organisation, that they served under a joint leader and that their actions are common - that each one of the persons in the dock has taken part in these cruelties".

I submit that though there may have been evidence of incidents of the same type, there has been no evidence whatsoever of concerted action on the part of that section of the staff at Belsen who are now in the dock, and therefore the Court are not justified in receiving any evidence against an individual accused other than that evidence which is specifically directed to that individual.

This screen of joint responsibility which the Prosecution has sought to erect, this accumulation of horrors with which the Prosecution has tried to besplat every one of the accused, is, in my submission, nothing but an attempt on the part of the Prosecution to cover up the weakness of their case against many of the accused who are now before you.

Now the Prosecution ask you by inference, I think it is safe to say, if not in so many words, that the mere presence of the accused during the commission of a war crime in itself makes them guilty of that crime.

Now I think the easiest way of dealing with that problem is to read you a very short extract from Archbold dealing with principals in the second degree. At page 1429 it reads as follows: "There must also be a participation in the act; for even if a man is present whilst a felony is committed, if he takes no part in it and does not act in concert with those who commit it, he will not be a principal in the second degree, merely because he did not endeavour to prevent the felony, or failed to apprehend the felon".

In my submission that passage relating to felonies under English law must be adopted by this Court when trying war crimes.

May I just briefly sum up what I have said so far. Firstly, concerted action means what it says. Secondly, there was no concerted action at Belsen. Thirdly, Regulation 8(2) cannot be applied to the evidence before you regarding Belsen, and fourthly, mere presence in Belsen camp in whatever capacity is no crime in itself.

I would ask you, therefore, in considering the cases of the two accused whom I represent, to put aside all these general allegations, to turn your backs on the accusations which have been made against the other accused, and to regard only the evidence specifically affecting each one of them.

If you find that the individual acts of ill-treatment, of murder, which have been alleged against them have not been proved beyond **all** reasonable doubt, then I ask you to acquit them.

I will take first of all the evidence concerning the accused Schmitz. The only evidence which has been adduced against him is the draft deposition of Vaclav Jeeny which was produced by Sjt. Dinsdale (page 185, exhibit 9) and paragraph 8 of the deposition of Raymond Dujou (exhibit 137). This deposition of Raymond Dujou has been, thoughtout, in the hands of the prosecution and they evidently attached such little importance to it with regard to Schmitz that they had not bothered to put it in as part of their case, and it was only because I put in the deposition in the defence of my other accused that they bothered to put it in at all. It does seem to me rather like the action of a drowning man clutching at a straw. They knew that the case against Schmitz was so deplorably weak that they put in this in a desperate attempt to bolster it up and I submit it is as of much use as that straw.

This deposition is dated 8th May which means, from what we have heard in evidence, that probably his original statement was made two or three days earlier. Exactly when it was made does not matter but, at any rate, it was during that early period of the investigation. You will notice from the general terms of this deposition that the deponent was, apparently, an inmate of Camp No. 1. He says he was at Belsen from May, 1942, so clearly he was not among those prisoners who were brought in during the last days before the liberation of Camp No. 2. You will notice too that of the five people mentioned in the deposition he refers to three specifically as S.S. and the fourth one, Herzog, by implication as being S.S. With regard to Schmitz he gives no such description. What he says is: "I know Schmitz Oskar (Photo 7-2) and although I never myself saw him beat anyone my friends have told me that he often beat them. He does not say where or whom or how he knew Schmitz and although he mentions his friends as saying they had often been beaten it seems to me very strange that these friends never came forward themselves to give their own evidence. I submit that either this was a case of mistaken identity or it may well be that Dujou did in fact see Schmitz in Camp No. 1, and he was quite able to do that because Schmitz did go to camp No. 1 after the liberation to assist in burying corpses. To my mind it is quite clear, or quite possible, and I suggest it may be the true answer, that when shown the photograph with Schmitz on it he recognised him but, as it is apparent from his deposition, he can say nothing about him whatsoever.

To continue with the statement of Vaclav Jeeny, this you will notice was taken on the 13th June, five or six weeks after the other deposition which mentioned Schmitz. That was fairly late on during the investigation when the war crimes investigation team had stopped taking evidence against a number of the accused and sending their investigators round with one or two photographs of people against whom they had little or no evidence. That, I think, is very significant because I submit they had only one small and worthless paragraph in Dujou's deposition against him and they wanted something more. I submit that this is one of the cases where they sent one of their investigators round with one photograph saying: "See if you can get something against Schmitz".

You will remember the evidence of Sjt. Dinsdale (transcript 14 pages 16 to 21) of how he interviewed Jeeny and made rough notes, how from these notes he prepared a statement which he handed to his officer and how this officer drafted out the deposition based on that statement. Admittedly Sjt. Dinsdale said in his evidence that he compared the photographs with the statement he made up from his rough notes, but I submit that if he was so hurried and so careless as to swear in his own affidavit (page 183 of the bundle) that he had himself prepared the draft deposition of Jeeny that in fact had been prepared by his officer, is it likely that his comparison of that draft deposition with his statement is anything other than cursory and incomplete?

I do not wish to put any blame on Sjt. Dinsdale because obviously at that time he was very busy, but, in my submission, this piece of paper,

this draft deposition of Vaclav Jecny, is no more than hearsay upon hearsay upon hearsay with the added confusion of interpretation, and I submit that no weight whatever should be attached to the evidence it purports to give. This document alleges that Schmitz was an S.S. man. From the evidence he has given before the Court, from the evidence of C.S.M. Mallon, from the evidence of Klippel and of others of the accused, it is, in my submission, very clear that he was never a member of the S.S.

First of all he was known by Klippel as a prisoner both at Tottenhorn and Belsen, a prisoner wearing prison clothing. Secondly Hoessler also knew him as a prisoner at Belsen and confirmed Schmitz's appointment as Lager altector. Thirdly from his own past record, from his criminal record and from the fact that he was a deserted from the German Army, it is obvious that he would never have been accepted by the S.S. or any other force. Fourthly he has not got his blood group tattooed on him. Fifthly C.S.M. Mallon said in his evidence that he received the impression from the interpreters, themselves internees in the same camp in which Schmitz was, that Schmitz was himself an internee.

From the details of this incident as they appear in this draft deposition -- barbed wire, main street, pile of turnips, No. 1 kitchen, pile of corpses -- everything shows, in my submission, quite clearly that Jecny is referring to Camp No. 1, Belsen concentration camp, as opposed to the Wehrmacht barracks, and the same evidence which supported Schmitz's story that he was never in the S.S. also supports him when he says he never went to Belsen concentration camp, that is to say, Camp No. 1.

Is it likely that Schmitz, a prisoner in Camp No. 2, should dress himself up in S.S. uniform, borrow a bicycle, ride from No. 2 Camp to No. 1, fire off a revolver, and then bicycle back to his own camp? It may be the prosecution will still, in spite of that, seek to establish that this episode took place in fact in Camp No. 2 and not Camp No. 1 - which I cannot admit - and the charge includes when it says "concentration camp" both Camp No. 1 and Camp No. 2.

If you turn to the learned prosecutor's opening address he says: "When you first arrive you first see magnificent barrack blocks, beautiful theatre and hospital and beautiful messes, but you find that was the Panzer Grenadier training centre, and you go about a mile down a track from there and that is where you find what was Belsen concentration camp. It is roughly a kilometre and a half long and 300 to 350 metres wide. It was surrounded by wire and in that compound there were about 60 wooden huts or thereabouts".

For a change I am in agreement with the prosecutor because, to my mind, it is clear from these words he does not regard what has been called in this Court No. 2 camp as part of the concentration camp at all, and I submit that the Court from the evidence they have heard, the evidence of Brigadier Glyn Hughes and others, must form that same opinion. The Wehrmacht barracks, known as No. 1 camp, was a separate entity altogether; it was no more than a transit camp and had the German Army been able to hold off the advance of the British troops a little longer I have no doubt that the inmates of this transit camp (who, you will remember, came largely from munition factories) would have continued their journey from there on to other factories.

I submit, therefore, that evidence of presence or activities in No. 2 Camp is no evidence whatsoever as regards the charge with which the accused are faced and where that evidence is the only evidence offered against an accused he must be acquitted. I suggest with regard to this draft deposition that either it does not represent the man Jecny's story at all or, if it does, he was mistaken, or that it is a case of mistaken identity of which there has been such a lot in this case. Not one of the prosecution witnesses have recognised, still less identified, Schmitz in this Court. His presence in this Court has depended solely upon alleged photographic identification.

You will remember when Sgt. Dinsdale gave his evidence he admitted that he did not take the names on the key to the photograph and that mistakes were possible. I will put it in this way: if a prospective witness had picked out a man on the photograph and the interrogator, looking at the incorrect key, had got the name Schmitz, I submit he would not write down in his rough notes "No. 3 on photograph 4", or whatever it was, but he would write in the name "Schmitz" and thereafter on all documents based on this report the same mistake appeared.

That is the total evidence against Schmitz. In his defence you have heard that he was a Communist, that he had been in prison on and off since 1936, and it was not until some time in 1944 that he first encountered a concentration camp, as we know it, still as a prisoner. It was not until about the 10th April that he arrived at Belsen, some four or five days before the British liberated the camp. Even then he went to No. 2 camp in the Wehrmacht barracks. That he was a prisoner and in the barracks is amply corroborated. The prosecution have failed in any to shake Schmitz's evidence and I submit that you must accept his sworn evidence on which both the prosecution and the Court have had an opportunity of cross-examining him. His evidence has been materially corroborated and, accordingly, I submit that you must reject the uncorroborated documentary evidence of two men who have never been examined.

On the first day of the trial the learned prosecutor said: "If necessary, if it is suggested that people were only at Belsen for two days, I will be prepared to show by evidence those people did the same things at other places before they got there and that they were all taking part in this concerted action of illtreating these internees". I think the learned prosecutor will agree that when he said "two days" he meant any short period. The prosecution has produced no such further evidence against Schmitz, and I will go further and say they cannot produce such evidence against Schmitz who was a prisoner himself and at no time was a party to such illtreatment as the prosecution alleges. By what, in happier circumstances, one might term a "comedy of errors" Schmitz was caught up in a net which was spread round Belsen.

You will remember his story, and I will not go into that again, but what I do wish to bring out is that he was never given any opportunity of explaining his true identity and the day on which he gave evidence before this Court was the first such opportunity he had had.

There is one other point I must deal with with regard to Schmitz. The prosecution have hinted that Schmitz had been in authority at concentration camps long before at Tettenborn. It is quite clear that at Tettenborn camp there were only 28 prisoners, a very small camp. Out of that 28 he was chosen and put in authority for the first time merely because he spoke German, and I do not think it is at all unreasonable that when he came to Belsen because he was wearing his armband with "L.A." on it and because he spoke German that his fellow prisoners with him should at once turn to him and ask him to be their spokesman between them and the S.S.

The prosecution have also, if I may say so, dragged another red herring across Schmitz's evidence by suggesting that no prisoner, even a Lager altester, could have put forward the suggestion that he, a prisoner, should divide the prisoners up into nationalities. In view of the fact that 15,000 disorganised prisoners arrived in this Camp No. 2, which Hoessler had to run with a very limited staff, is it surprising that when a prisoner wearing a Lager altester's armband, speaking German, should appear and suggest doing something which might lighten his task he should agree to it gladly?

If Schmitz, as a prisoner, had such a black character as the prosecution seek to establish is it not strange that out of those 15,000 men in Camp No. 2 not one of them has ever denounced him; not even the interpreters who have been fellow prisoners of his?

I will now, very briefly, sum up my arguments relating to Schmitz. Firstly he is accused of being a member of the S.S. He never was. Secondly he is accused of committing certain acts in the concentration camp, Camp No. 1. He was never in it. Thirdly there is no evidence of any group of activities on his part in Camp No. 2. He committed no such acts. Fourthly the evidence which the prosecution have produced against him is astoundingly weak and would never have been admissible in an ordinary Court of law. To suggest, as the prosecution do suggest, that this man should, or may, lose ~~his~~ life on the strength of this evidence is, to my mind, ludicrous. Lastly any case which the prosecution may conceivably have made out against him has, in my submission, been repudiated a hundred times by his own and by other evidence. Therefore I ask the Court to acquit this man of the charge he is facing as it is my submission any other course would be contrary not only to all principles of justice but to all principles of common sense.

Before I begin to deal with the evidence regarding Francioh I would like first, if the Court will permit me, to read two very short passages from Archbold. Both are taken from that section of a chapter dealing with the credibility of witnesses. The first is to be found on page 458 under the heading of "Disinterestedness". It is as follows: "A witness to be perfectly credible must not be in the slightest degree biased or partial to one party or another. Therefore if it appears that the witness is prejudiced against the party against whom he appears or has before expressed sentiments indicative of such prejudice or if it appears" -- and I leave out the other instances -- "all these are circumstances which detract proportionately from his credit".

The second passage is to be found on page 460 under the heading of "Veracity". It says: "The character of a witness for habitual veracity is an essential ingredient in his credibility, for a man who is capable of uttering a deliberate falsehood is in most cases capable of doing so under the solemn sanction of an oath. If, therefore, it appears that he has formerly said or written contrary to that which he has now sworn, unless the reason for his having done so is satisfactorily accounted for, his evidence should not have much weight with the jury, and if he has formerly sworn the contrary the fact that although there is no objection to his competency is almost conclusive against his credibility".

I think the learned Judge Advocate will agree that represents the true view on these matters in the English courts, and it is a view which has been reached as a result of hundreds of years judicial experience. I will ask you to keep those two passages clearly in your minds when considering the weight to attach to the evidence upon which I am now going to comment.

First of all I will deal with the evidence of the three live witnesses, Bimko, Szafran and Ilona Stein. I will take Bimko first. (Transcript 5 page 10). She said in her evidence that before the British troops arrived she saw Francioh jump out of the kitchen and shoot twice at a woman who was about to take some potato peelings. In her deposition of the 9th May, 1945 (page 10 of the bundle, paragraph 8) she says: "On the day before the British troops arrived at Belsen I saw Karl Francioh who was a cook shoot a man intonc dead for stealing vegetables". A man intonc. That was in her deposition of the 9th May, but in her deposition of the 28th May (page 13) she says: "With reference to paragraph 8 of my deposition dated 9th May, 1945. In this paragraph I refer to the killing of a prisoner by Karl Francioh. I identify this man as No. 5 on photograph 1. I witnessed this shooting, and because I was a doctor, I immediately went to see if I could do anything for him. I saw he was dead, having been shot through the stomach".

When in cross-examination I asked her why she had changed the sex of the victim she said she had always said it was a woman. Dr. Bimko is an educated and intelligent woman, that is quite clear, and it does seem to me most extraordinary that she should fail to notice not only on one occasion when she made her first deposition but on the second one also that on both

those occasions she referred to a man if in fact she meant a woman. To my mind there is a simple explanation, one that was put to her, and that is the whole episode is imaginary and never in fact occurred.

It is clear from the evidence that there was no love lost between the cookhouse and the hospital personnel and Dr. Bimko would not have been very pleased when her horde of rotten food was discovered and she was very determined that her hatred - well deserved hatred - should be visited upon people who had oppressed her for so long, and Francioh has been selected as the unfortunate victim of that hatred.

In her evidence before the Court she admitted she never knew his name and she also admitted that she never saw his photograph until after she had made her first statement. How then could she possibly know the name of the person to whom she was referring? I suggest the only way in which she could have done it was to have referred to "a cook" or "one of the cooks in my part of the camp and when shown later the photograph of Francioh she said, when asked: "Is that the man" - knowing her story to be imaginary and untrue, but knowing this man was a cook - "Yes, that is him".

Consider too how the story grows as time passes. Her first affidavit is a simple statement that Francioh shot a man dead; next he had been shot through the stomach, and when she comes into Court the victim has been shot in the head as well as the stomach. She has had time to think over her story and it occurred to her that perhaps the Court might think it peculiar that a man interned should be shot dead outside the cookhouse in the women's compound and, what could be simpler, the man turned into a woman.

The second witness was Dora Szafran. Here again the comparison between her deposition of the 25th May, 1945, and her evidence in Court is most remarkable; not only that but the comparison between her evidence on the first day (you will remember the Court adjourned while she was giving evidence) and on the second day, the day following.

In her affidavit (Page 157 paragraph 7) she says: "On the day that the English arrived, about three hours before the actual occupation, I saw Kramer, Nikolas Jenner and Karl Francioh shoot with Schmaisser guns at a group of prisoners. They fired through the kitchen window for no reason and I can say that they killed about 22 people".

In her evidence in chief the occurrence still took place before the British arrived but now there were only two people involved in the shooting and instead of firing through one kitchen window they fired from separate buildings; the 22 dead have turned into some 50 people. In cross-examination she does not know what a Schmaisser gun is although that word appeared in the deposition and now says that Francioh did his part of the shooting with a revolver and the other participant now comes out of the other building into the open using a rifle and did not content himself with shooting the people from where he stood but ran after them towards the wood. What he did when he left the immediate vicinity of the kitchen we are not concerned with.

Next she is asked whether it was usual to ask an S.S. man why he was shooting, and to explain that she most conveniently changed the time of the occurrence from three hours before to some hours after the arrival of the British. She says she knew that because she had seen Kramer being displayed to the prisoners, an incident which in fact did not take place until the 16th.

Does not it seem strange this young girl, some hours after the liberation, knowing she was free, should remain in the kitchen, in her own words, "working very hard"? Is not even more remarkable that she should have approached this man, whom she alleges acted like a homicidal maniac, and discuss the killings with him while he is still standing there with the revolver in his hand discharging a fusilade of bullets?

The number of the killed now becomes at least 50 and perhaps more. Those two men must have carried a lot of ammunition. This young girl says when it was all over she went out and carefully counted the dead, and she counted the dead on both sides of the cookhouse. As Francich was alleged to be shooting out of the window looking out on the other part of the cookhouse I do not see how they could be shot on both sides of the cookhouse.

Not only does this witness contradict herself in Court but when asked to account for the discrepancies between her depositions and her evidence all she can say is: "Perhaps the report was not made carefully but I can swear the whole incident really took place and that the mistake is only caused by improper writing down".

In connection with this episode there is one other point I would like to raise. The Court will remember the disturbance and outbreak of shooting mentioned by Brigadier Glyn Hughes in his evidence and also by Major Bernic and others on that first day. There is considerable difficulty in establishing the exact time at which that episode took place but I think it is fair to say, during the evidence as a whole, that Capt. Sinton arrived at about 1500 to 1530 hours and that the disturbance to which they refer took place around 1800 hours or soon after. Brigadier Glyn Hughes said in his report that he arrived at about 1800 hours and Major Bernic in his evidence says he arrived about 1700 hours and that the Brigadier was also there, and the Brigadier says that the occurrence took place about half an hour after his arrival.

It is my submission that this time, about 1800 hours, would be about the same time as the episode which Szafran relates to took place and in view of Brigadier Glyn Hughes's evidence (and you will remember the affidavit) it is remarkable that such a large scale shooting, which she alleges, did not come to the notice of the British authorities. You will also remember that Brigadier Glyn Hughes says that when he inspected the camp on the following morning he noticed no heap of corpses around cookhouse No. 3.

One further thing. If this incident did take place is not it remarkable that no other witnesses have been produced to corroborate it?

Finally you have from Francich's own evidence that that afternoon he was out of camp helping his wife to pack up. In my submission, the whole of this story is a complete fabrication and as evidence against the accused is entirely worthless.

The third witness was Ilona Stein. If you will look first at the deposition on page 144 you will read: "About 12th April, 1945, a girl whom I knew as Broche, Christian name, came into the kitchen whilst I was there to bring back some empty tins. She did not try to steal anything and for no apparent reason Francich shot her in the chest and she died in the kitchen. I myself saw the shooting and the girl die. Other prisoners, friends of the girl, later took her to the big pit which acted as a communal grave. The same day whilst I was in the kitchen I saw him shoot two girls with his revolver as they went past the kitchen". You have heard her evidence in Court. She was never in the kitchen at all, but on this particular occasion she says she was walking towards it helping her friend to carry a container. Francich does not shoot the girl in the kitchen but comes outside and starts shooting whereupon the witness, Stein, runs away and never sees the shooting of her friend at all nor does she now see her die either in the kitchen or elsewhere.

There are a number of other discrepancies, but I will not trouble the Court with those. When asked to account for these material discrepancies she says there was no Hungarian interpreter and as she spoke German very moderately they must have been caused by the translation.

I put this very point to Col. Champion in cross-examination and he said that in the case of a Hungarian defendant if he was satisfied the witness understood German he employed the German interpreter Traute Neumann, but if he was satisfied the witness could not understand German, or any of the other languages of his own interpreters, he would have got hold of a Hungarian interpreter. If you look at this affidavit you will see the interpreter was Traute Neumann and presumably Col. Champion was perfectly satisfied that Stein understood German.

In my submission all three of these witnesses who have suffered so long under the harsh hand of their oppressors cannot be otherwise than violently prejudiced against any and all of the accused. It is perfectly natural and perfectly understandable, and I must ask the Court on that ground alone to view the evidence of these three young women with very great suspicion.

When you consider also the sworn evidence given by these witnesses in their depositions differs so materially from that given by them here in Court as to amount to a complete contradiction, and that they have given no satisfactory explanation of this, then I say you cannot believe these witnesses and you must reject their evidence completely.

I propose to leave for the moment the evidence given by Lidia Sunschein and the accused Kopper and turn to the affidavits against Francich. First of all there is that of Irene Leffler (page 99 paragraph 4). The passage upon which I want to comment is: "One day in February, 1945, I was passing the kitchen store-room". I will not go any further; the relevant passage is "February, 1945".

You have heard that Francich came to Belsen between the 10th and 17th March, a fact which the prosecution have not challenged.

How then could Franciich have shot this girl before he arrived in the camp? My friends have already made a number of remarks on the subject of affidavits and I agree entirely. The one thing I will say is that from the evidence of Col. Champion if he allowed a date to go into a deposition he only allowed it if he was satisfied the deponent had some good reason for stating that date, and therefore we must accept that date as the date she meant; you are not entitled to go outside what appears on the face of the affidavit. Accordingly, I submit that you should disregard this affidavit completely on those grounds.

There is one further point that I would draw to your attention in regard to this affidavit, and that is the victim is of Russian nationality. That is the only instance in the whole of the evidence against Franciich where the nationality of the victim is mentioned.

The second deposition is that of Maria Nouman, page 115, paragraph 3, Exhibit 67. The scene of the alleged incident is No. 1 kitchen, the kitchen with which Franciich never had anything to do with at all. The deponent, you will notice, is a nurse, but what she was doing in the men's compound I do not know; nor does she explain why she was in the vicinity of the kitchen, because if she was a nurse it is unlikely she was a member of the kitchen kommando. But, unfortunately, this is an affidavit and we have had no opportunity of questioning her on this.

You will also notice that this is the affidavit in which she refers to going and getting an injection from Dr. Klein. I ask you to consider very closely whether a woman would in these circumstances have gone to Dr. Klein to get an injection to keep the heart beating, and whether if she had gone she would have got an injection. What she means by injection I do not know; whether she means hypodermic syringe or not I do not know. To my mind it is just embroidery and a most unlikely occurrence.

With regard to those five witnesses, three live ones and the two who appeared only on paper, the learned Judge Advocate said, when dealing with my friend, Capt. Phillips', objection to the admission of the affidavits (Transcript 15, page 6) that he thought it unsound to say that because one affidavit or several affidavits may not convince the court as to their truth, therefore the court should pay no attention whatever to, say, eighty or ninety others. Now, Sir, in my submission, here where we have been able to check the reliability of three out of the five depositions relating to Franciich and find the statements in these three completely unreliable, then it is reasonable to argue that the statements contained in those last two affidavits which I have mentioned are equally unreliable. All five deponents are young women; all are Jews from Central Europe; all were in the same camp; all went through the same ordeals and all, presumably, were inflamed by the same desire for revenge, and, in my submission, all are thoroughly unreliable, and the court should place even less reliance on these affidavits than on the evidence of the witnesses who have appeared in this court.

I have left to the end the evidence of two other witness, Lydia Sunschein (Transcript 11, page 18) and Hopper (Transcripts 41 and 42), and also her deposition. First of all Sunschein. Sunschein had made no allegation against Franciich in the deposition and her evidence in court was the first we heard about it. She says: "Franciich when in cookhouse No. 2 beat people terribly so they were trembling when he came." The occurrence took place at the end of February or the beginning of March, when Franciich had not arrived in Belsen. Those words "beat people terribly so they were trembling when he came" to my mind is a typical instance of the exaggeration, gross exaggeration, in which all these female witnesses have indulged. Is Franciich very reasonably said in his own evidence, it would be a most peculiar course of conduct to adopt when he was a new comer in somebody else's kitchen.

Now, Sir, you have already heard a lot about Kopper's affidavit, and I will not dwell on it any longer. All I would draw your attention to is the distances she mentioned. You will remember that she said one half of cookhouse No.3 was 10 metres from block No.224 and the other half was 25 to 30 metres, and that she could look out of her window in block No.224 and see everything that was going on very clearly. In my submission, that is a deliberate attempt to mislead the court. You have heard from Francich's evidence his estimate of the distance between the cookhouse and block No.224 was 150 metres, and Miller's evidence was that one part of the cookhouse was 250 metres away and the other 300 metres away. Not only that, but in between the cookhouses and block No.224 was a belt of trees which effectively prevented anybody in block No.224 seeing what was going on in the cookhouses. I will not labour the point, because it does seem to be perfectly obvious that Kopper is lying deliberately and maliciously, and is continuing the same course of conduct which she has done for the last few years, that is to say, trying to ingratiate herself to people who are immediately over her.

That is the evidence against Francich, and, in my submission, if you take each affidavit separately each one of those is bad evidence and by itself would never convict anybody in a normal court of law. I submit that two blacks do not make a white, and that no amount of bad evidence is sufficient to make one piece of good evidence, and accordingly you should reject all this evidence.

Just turn to Francich's own evidence - the story he told the court. The first thing I would like to say is this. You saw this man in the witness box and you formed some idea of his intelligence or lack of it. You remember the great difficulty he seemed to have in explaining his dates and expressing himself. He is a coal miner from Silesia, a conscript into the S.S. He has bad health, and for that reason was set to work in the officers' mess at Auschwitz, where he remained some four years as an officers' mess cook. After that he travelled round the country for three months, and finally arrived at Belsen in the middle of March. He has obviously got a very bad memory and has got his dates completely muddled, like many other people in this court.

I have no doubt the prosecution will make a lot of the ten days imprisonment. We have heard a lot about this imprisonment, which he says took place in April; other people say it took place in March, and one witness, Haschko, said it never occurred at all. But to my mind it is clear that he was in prison in Belsen for a period of eight to ten days, and exactly when it was is not material.

You have heard this man's history and you have seen him in court. Why should he have this sudden outbreak of madness? Why should he suddenly believe in this insane fashion and in a very short space of time kill some 54 people, or the bulk of them, when he knew full well that according to the witness Szafran the British troops had already arrived.

You will doubtless be wondering why all these people have made these accusations against him, and my answer to that is this. Francich, as were all cookhouse personnel, was very well known. The cookhouse was the most important part of the lives of these people, and if they went short of rations or did not get any food it was him who they blamed above anybody else; it was against him their hatred was directed. You have heard in evidence that around this cookhouse were placed a number of Hungarian guards and sentries to keep people away from the cookhouse. You have also heard that they did shoot, and had been ordered to do so by their officer - if necessary to shoot down the whole of the women's camp. The women internees in this camp when they were released were shown no photographs of these Hungarian guards who had done this shooting, and were shown only photographs of S.S. personnel who were connected with the cookhouse, and it is my suggestion - and a suggestion which I ask you to adopt - that in fact they have taken these incidents, such of them as did occur, and

I do not admit for a moment they all did, and pinned them on this one man who was there ready to identify and whom they knew had been at the cookhouse because they were determined somebody should suffer for what had occurred, and since the right people were not on the photograph to identify they chose Francioch.

Just to sum up the evidence in the case of Francioch. All the evidence against him is, in my submission, of extremely doubtful credibility. Secondly, all these incidents which are alleged to have taken place took place around or in the vicinity of the cookhouse. Is not it rather strange that of the 70 odd internees employed in that cookhouse only one has given any evidence against Francioch - and that one Francioch denies was, in fact, ever in his cookhouse at all? Is not it remarkable that the people who could have seen all this were clearly and more frequently than anybody else not one has come forward to give any evidence against Francioch?

Lastly, his own story. It is unsupported I know, but the Court and the prosecution have been able to cross-examine him on it, and, in my submission, his story as he told it remains substantially unshaken.

If you consider only these specific allegations against the accused - which I submit you must - in my submission the prosecution have failed to establish their case beyond all reasonable doubt. On that ground alone I ask you to acquit Francioch.

Just two short points before I finish. Firstly, I referred earlier to the fact that the affidavit of Irene Boffler was the only occasion on which the nationality of the victim was mentioned, the Russian girl, and I asked you at the same time to reject that affidavit altogether because the date of the alleged incident was February. The burden of proof is upon the prosecution, and the prosecution must prove every material and necessary fact raised in the charge. In my submission, one of the material and necessary facts in the charge is that Francioch was concerned in the illtreatment of allied nationals. The prosecution have, in my submission, failed to produce in evidence - acceptable evidence - that Francioch had ever illtreated an allied national, and on that ground alone their case must fall.

You heard Col. Smith say the day before yesterday that there is substantial general agreement among various military manuals as to what a war crime is. They all have this in common, that it must be a crime connected with the operations of the war in some way or another. Now, whatever occurred at Belsen, in that hellish there, had no possible connection with the war. If that is true of the accused Francioch, that what he did or did not do or what he is alleged to have done, had no possible connection with the war, how much more true is it in the case of Schmitz? How one civilian internee can possibly commit a war crime against another civilian internee is beyond my comprehension, and, Sir, I submit beyond the comprehension of any reasonable man.

There I leave in your hands these two obscure German nationals who are alleged by the prosecution to be war criminals.

(At 1255 hours the court is closed)  
(At 1430 hours the court is reopened)  
(The accused are again brought before the court)

MAJOR BROWN: May it please the Court. The three men whom I represent in this trial are charged with Belsen, and with that alone. These men were very minor characters in the S.S. and had very little to do with the happenings which were the cause of this trial. In fact, apart from the accused Mathes, who was only once in what I might call the internee part of the camp - and that was to visit a store to obtain some shoes - the other two were in Belsen, Kulasson in No. 2 camp for about five or six days only, and Eggersdorf in No. 1 camp for seven or eight days only, and those

men are being tried along with the commandant of Belsen camp and others who held responsible positions, and are charged with being concerned in the guilt for conditions which could not have arisen during that short time, and that they in their minor capacities could not conceivably have remedied. It appears to me to be unreasonable, to say the least, to suggest that these men, considering the short time they were at Belsen and their minor capacities and positions, could be found guilty of having acted in a concerted manner to bring about such conditions.

There has been produced before the court a mass of evidence, both oral and documentary, but in the case of Mathes and Egersdorf the only evidence produced has been in the form of affidavits, and in fact in the case of Egersdorf there is only one paragraph in one affidavit. Neither of these two men was recognised by any witness brought before the court.

One point I wish to make regarding the affidavits. It is the duty and responsibility of the court to give what weight they decide fit to the affidavits, but my point is this: It is the duty of the court to take the affidavits at their face value and either to accept what they say or not to accept it. It has appeared from the learned prosecutor's questions that he intends to ask the court to take an affidavit and if it states something which does not quite suit his case to alter the location or the date to a more suitable location or date. In my view the court cannot do this.

Col. Champion has stated in evidence that he cross-examined the defendants on such points as dates and made sure, so far as possible, that the dates were correct. So that if an affidavit states that an incident took place at a certain place on a certain date the court must accept that or reject it.

The court will no doubt hear the learned Judge Advocate in his summing up refer at length to the question of reasonable doubt, and he will doubtless tell the court that if there is a doubt the benefit of it must be given to the accused. I will go further than that. I ask the court to say that they will not convict a man on the evidence of affidavits alone, and that evidence given in affidavits will only be accepted where it corroborates sworn oral testimony.

I now propose to deal with the case of each accused in turn. The evidence against Mathes is contained in three affidavits, that of Coch, page 16, Grunwald, page 37, and Lichtenstein, page 93. The evidence broadly is that between the 1st and the 15th April 1945 Mathes was shooting from No. 2 kitchen at Belsen at internees who were trying to steal carrots, and that he killed a large number of them and wounded others.

Coch describes him as chief of No. 2 kitchen and refers to dates from about the 1st to the 15th April when some 30 were killed under these conditions.

Grunwald refers to a similar incident about the 10th April, when the prisoners were shot.

Lichtenstein states also that Mathes was kitchen chief of No. 2 kitchen and that while he (Lichtenstein) was removing corpses from the blocks he had to pass No. 2 kitchen and he saw similar incidents. He mentions the dates from the 7th April until the English came.

These affidavits were all made on the 4th June 1945 before Major Champion, and with the same interpreter, Traute Neuman.

It seems to me from his questions that the learned prosecutor will put forward the proposition that these incidents may have taken place at another kitchen, but it appears to me that the kitchen concerned is quite

well identified as what all witnesses have referred to as No.2. None of the prosecution witnesses who were internees had any doubt as to the numbering of the kitchens. The kitchen concerned to my mind is conclusively placed as No.2 by the statement of Lichtenstein, who says he passed this kitchen while removing corpses, and the court, having been shown how the corpses were removed by the witness Mr. Le Druillenc, will be able to satisfy themselves on this point. The Court will remember, no doubt, that that witness stated that the corpses were removed from hut 11 and that the route taken was along the main road past No.2 kitchen.

I would like now to refer to the evidence of three prosecution witnesses who were asked if they could recognise the accused. They all worked in No.2 kitchen. Litwinka said: "I worked in No.2 kitchen for a few days and Sunschein also worked in that kitchen. I cannot recognise that man." Frommer said: "I went to Belsen in January 1945. I was employed in No.2 kitchen. No.18 was not the chief of No.2 kitchen." Sunschein said: "I arrived at Belsen in January 1945. I became a cookhouse kapo. I was employed in cookhouse No.2. I do not know that man. He was never in No.2. I do not know him at all." Klein, a further prosecution witness said: "I worked in kitchen No.2 every day." She did not recognise Mathes.

Further to this Pichon said that he himself was in charge of No.1 kitchen and that Mathes was never in this kitchen while he was there. He also said there were two kitchens in the men's compound.

In my view that evidence should completely destroy the accusations made in the affidavits against this accused, but I have gone further than that, and there is sufficient evidence to show that at the times of those incidents he was not in the prisoners' part of the camp and was employed in the bathhouse.

I do not propose to go over the evidence of various witnesses as to who was employed in the various cookhouses, but apart from the period which Mathes himself says he spent in the S.S. cookhouse outside the internees part of the camp it is clear that he was never employed in a kitchen in Belsen. Egersdorf says: "He was employed in the bathhouse. I saw him in the morning and at night." Otto says: "Mathes was in the bathhouse on 6th April 1945 when I was there." Zoddoll says: "Mathes was employed in the bathhouse on the 14th or 15th April." Ilse Forster says: "I saw Mathes on the 13th or 14th April about 1500 to 1600 hours in the bathhouse." Bothe says: "Mathes was employed in the bathhouse. I delivered wood up to the 9th or 10th April. Hempel, who was employed in No.2 kitchen said: "Mathes was never in No.2 kitchen. He was employed in the bathhouse." Staroaka says: "He was responsible for part of the bathhouse. He was there the last time I was there on the 10th April."

The evidence of the accused was that he was employed in the S.S. kitchen until the 10th to the 15th January 1945, and that after that he was employed in the bathhouse until the British came. He also states that he was only once in the prisoners' part of the camp on a visit to a store for some shoes.

I would like to refer here to the fact that this accused was not recognised by a single one of the prosecution witnesses.

I feel that it has been made perfectly clear to the court where Mathes was employed, and also perfectly clear that he did not commit the offences described in the affidavits.

There is no other evidence against the accused, and I would like to refer to the evidence on his behalf. That of the woman called Kurs, contained in her statement, Exhibit 149. In that statement she said that she was employed in the S.S. kitchen when Mathes was an overseer there. She said he was employed for a certain period during 1944. Mathes says

he was employed there till the 10th to the 15th January 1945. She said that Mathos was a Wehrmacht man who cursed the Hitler regime, and that later he was made an S.S. man and spoke of this with disgust. Mathos himself said exactly the same. She goes on to say that he treated prisoners well and gave them extra meat, and told them the allied radio news. She says he never illtreated anyone and that other girls could support her statement. She closes her statement by saying that her father died at Belsen and that her mother died as the result of treatment at Belsen, but still she feels that Mathos does not belong to the guilty persons.

I feel that I am justified in saying that there is no evidence in respect of this accused that he ever illtreated or caused the death of any internee, and on the contrary, that he did all he could in his small way to alleviate the conditions in which the internees lived, and I feel perfectly confident that the court will acquit this man of the charge against him.

The next accused is the accused Kulasson. The evidence against him is contained in the oral evidence of the witness Zamoski, and in three affidavits; the affidavit of Gutman, which must be read along with that of Zamoski, that of Muller, and the affidavit of Raschinor. The accused was recognised in the dock by the witness Zamoski and by another prosecution witness, Synger, who said: "I remember him from Belsen, but could say nothing more than that.

I would like to deal first with the affidavit of Raschinor. It refers to an incident which occurred when he arrived at Belsen from Dora. The witness in his affidavit said he recognised Kulasson from Dora and Belsen, and he says he arrived at Belsen on the 2nd April. He refers to lorries which, to my mind, makes it appear that he travelled by road. He said that ten prisoners died during the journey and that Kulasson was in charge of the transport. The incident that he refers to is the shooting of a man who was trying to steal carrots. In my view the defendant must be mistaken, as he is wrong on many points regarding Kulasson. Kulasson arrived at Belsen about the 9th or 10th April. The evidence on that point is the evidence of Hessler and the accused Schmitz. He travelled by train and he was not in charge of the transport. Also Schmitz said that on his transport of which Kulasson travelled there was no shooting when they arrived, and that about 47 died on that transport. Hessler said that about 40 died.

I do not propose to deal any further with this affidavit, as I am quite certain the court will not let it carry any weight at all.

The evidence of the affidavit of Muller states that Kulasson entered block No. 87 a few days before the British arrived and ordered all Jews to go out and clean the road, and that he beat them with a thick stick. He says he saw one man, a Russian, collapse, and he was told later that this man had died.

I am not able to produce any evidence to rebut what this affidavit purports to say, except the examination of the accused in the witness box. He stated that he hit one man with a broom to make sure that the room was properly cleaned, and denies that any such incident as described in the affidavit took place. I can only say that this affidavit must be the result of the exaggeration which has been prevalent throughout the whole of this trial, and which seems to me to have been the natural result of incarceration in an internment camp.

The remaining evidence is that of the witness Zamoski and the affidavit of Gutman, which corroborates the affidavit of Zamoski, and I would like to go over the evidence which Zamoski gave in the witness box, which, as regards the journey from Dora to Belsen, is materially the same.

as the affidavit. He says that Kulasson was in charge of the transport, that the prisoners had no food or water, and that more than 95 died in his truck alone. He says that Kulasson refused to give him water or bread and that he said everyone would be dead soon. The affidavit differs slightly, in that he said 50 died.

There is evidence to show that these statements are untrue. Hossler and the accused Schmitz say that Kulasson was not in charge of the transport, that it was a man called Hartwich. Schmitz, who travelled on the same train, said the prisoners from Dora got five days' rations. Schmitz said that about 47 died on the journey from the whole transport, and Hessler said about 40.

Zamoski then went on to say that Kulasson stood at the door of the block he was sent to and was beating the men with an iron bar. This evidence of beating is corroborated by the affidavit, but that is all the evidence about. Again I have not been able to find any evidence to disprove this, and I have to attack the evidence on internal grounds, and there are several points that strike me.

First of all, I refer to the statement of Zamoski that Kulasson beat a man called Maidan, who had to go to hospital. This would appear to be confirmed by Gutman. He goes on to say that he himself was beaten so severely that he had to stay in bed for three days. This was not mentioned in his affidavit, confirmed by Gutman, and that would appear to me to be a strange omission. Zamoski then states that he went to hospital after a few days and was told by a sister that his friend had died. On the other hand, his affidavit confirmed by Gutman that he was told this in the hospital the second day after his arrival at Belsen. If he himself had to stay in bed for three days as a result of injuries from a beating he could not have gone to the hospital on the second day of arrival.

He stated in evidence that he was told that his friend was dead by a sister from the hospital. Dr. Schmidt and Dr. Kursko both state that there were no sisters employed in the hospital for internees in that camp. I suggest to the court that these statements are completely untrue as regards the accused, and I am certain the court will not accept such unsatisfactory evidence against the accused.

I would like to point out that this accused was not employed in such a capacity of administration or in a cookhouse, as was described many times, and that he could easily have availed himself of the opportunity given to S.S. guards to leave the camp, but that he stayed on in this camp because he was quite certain there was nothing against him.

I feel in this case that the court must consider the evidence against him very carefully, and I am confident that it will decide that on that evidence they cannot convict him of the charge.

The case of the accused Eggersdorf presents very little difficulty. The specific accusation against him is contained in one affidavit, that of Dora Almaleh, the first affidavit in the book. It states that Eggersdorf shot a Hungarian girl who had stolen a loaf from the bread store at Belsen. It will be of interest to the court that the accused went into the witness box and told the court that he was at Auschwitz from the 30th March 1941 until the 21st January 1945, and that he was in Belsen for about seven or eight days, and despite this long period - during which he has told the court that while at Auschwitz he was employed as a cook in charge of a cookhouse, and at Belsen in charge of a food store - there is against him only this one single accusation. You heard him say in the witness box that he could not understand why such an accusation should be made against him, but that when he saw the affidavit it struck him that it had been made by a girl whose Christian name was Dora and who came from Salonika, and that he had dismissed the girl from his store a few days before the

British arrived because she did not work properly. This girl's name was also Dora, and although he cannot say definitely that the person who made the affidavit is this same person he thinks it must be. It is for the court to decide what weight they wish to give to affidavits, but I am sure that in the circumstances they cannot accept one paragraph in one affidavit which is completely unsupported.

This accused also was not recognised by any prosecution witness.

The accused Klein, who worked in the bread store, said that Eggersdorf never came to the bread store and that she could not remember any such incident as described by the affidavit.

There is a second aspect in the case against this accused which I have left to this point, because I feel that I will do more justice to the accused if he is found not guilty upon a question of fact. There is also a question of law arising in this case. The accused is charged with committing a war crime in violation of the Laws and Usages of War, having caused the deaths and suffering of allied nationals. That exhibit, which is the only evidence against him, relates to the shooting of a Hungarian girl in April of 1945. I feel quite confident that it is within the knowledge of the court that Hungarians were not in April 1945 allied nationals, and that the court is bound to agree that at that time a German could not commit a war crime against a Hungarian.

The question has already been put before the court, and all I wish to add to it at this moment is this. The court will remember that the evidence of the prosecution has shown that Hungarian troops were guarding the camp along with the Wehrmacht and the S.S.

That is all I have to say in respect of the accused Eggersdorf, and I am quite confident that the court will not find him guilty of the charge.

CAT. FIELEN: May it please the Court, I represent the accused Bichon, No. 22, Otte, No. 23 and Stofel, No. 25. They are all three included in the Belsen charge only.

Before I deal with the evidence relating to the individual accused whom I represent I would like to make a few introductory remarks relating to the charge sheet and to the Royal Warrant. As regards the charge sheet, I would draw the attention of the court to the words "together concerned as parties." To be concerned together, in my submission, means to be implicated jointly with others. The charge, therefore, is that the accused severally were actively involved with the other accused in illtreating the internees in Belsen concentration camp.

Regulation 8 of the Royal Warrant lays down that evidence of concerted action by a unit or group may be received as prima facie evidence of the responsibility of each individual member of that unit or group.

Excluding, for the moment, Regulation 8, in order to prove this charge I submit that the prosecution must prove joint implication by all the accused in the alleged illtreatment, otherwise those not so proved to be involved would be entitled to be acquitted. In order to bring the accused within Regulation 8 the prosecution must prove the accused were a unit or a group acting in concert in committing a war crime. Then every member of that unit becomes prima facie responsible for the war crime.

My friend, Capt. Phillips, has already laid before the court a definition of "concerted action" - to contrive, to premeditate, to plan. All this, in my submission, means the prosecution must prove some quite definite mental application and agreement by each of the accused to this alleged illtreatment.

What evidence has been produced that the accused whom I represent were members of a unit which did so contrive and so premeditate and plan? What evidence is there that my three accused were jointly implicated with other accused in illtreating internees in Belsen? In my submission there is none at all. It follows, if the court accept this argument, that each individual accused can only be held responsible for such acts of illtreatment as are proved against him personally.

In this respect I would point out to the court that before acts of illtreatment can be considered to be a war crime it must be proved beyond reasonable doubt that in each particular case the victim was an allied national. As far as my accused are concerned, they are bound by German law, which stated, in effect, that Poland as a sovereign state had ceased to exist, that previous Polish nationals from that part of Poland annexed by Germany were, as a result, German nationals. With very few exceptions, whom the accused whom I represent may or may not have known about, the internees at Belsen came from countries annexed by Germany by conquest. These countries became part of the greater Reich, and from my accused's point of view their nationals became German nationals.

I think it is common ground between the prosecution and the defence that a German cannot commit a war crime against another German. If these facts exist then although an offence may have been committed in respect of which a conviction could be obtained elsewhere, it is not a war crime on which a conviction can be obtained in this court. I would go even further and say it is a necessary ingredient of the *mens rea* - the guilty knowledge - to be proved in establishing the perpetration of a war crime that the accused must know, or could reasonably be expected to know, that the nationality of his victim was that of an allied nation - and I use the word "allied" in the United Nations sense of the word.

I am supported in this contention by that part of Col. Smith's argument which referred to the definition of a war crime as being such an act by an enemy as may be visited with his capture or punishment. It is essentially an act which the victor punishes to safeguard the lives of his own nationals or the lives of his allies. The victor has no concern with crimes against neutrals, against those who are not allied to him. They are not war crimes, and other means are available to obtain redress by the injured parties. It follows that a German cannot commit a war crime against a person who is not an allied national.

I would refer the court to paragraph 437 of Chapter 14 of the Manual, which reads as follows. The side-note reads: "How legitimate war is on the whole secured." "As war is the last remedy of Governments for injuries, no means would appear to exist for enforcing reparation for violations of the laws of war. Practically, however, legitimate warfare is, on the whole at least, secured through several means recognised by International Law. Moreover, it is in the interest of a belligerent to prevent his opponent having any justifiable occasion for complaint, because no Power, and especially no Power engaged in a national war, can afford to be wholly regardless of the public opinion of the world."

Bearing that in mind, supposing a nation captured an enemy and accused him of having committed a war crime, I maintain that such a prosecution is not to avenge the alleged crime but to act as a warning and a deterrent to others not to act in a similar way in the future. It is to secure legitimate means of warfare for the future, the victor bearing in mind the susceptibilities and the conscience of the neutral powers, who knew that the victor is only concerned with his own and allied nationals. If it should then appear that the accused on reasonable grounds thought that his victim was not an allied national, it would be clear to the prosecuting power that no damage had been intended against him or his allies. He should, in my submission, as a chivalrous and magnanimous conqueror admit to such a defence as a valid one against a charge of a war crime, but only where the accused had reasonable grounds for his belief.

I follows from this that it is part of my case in this trial that the prosecution must prove the accused knew his victim was an allied national, otherwise he cannot be guilty of a war crime. It is the basis of my defence that the prosecution's affidavit evidence is substantially unreliable and that an accused should not be convicted on such evidence when the court have not had an opportunity of testing the veracity of the statements made. In this respect I would like to adopt on behalf of my three accused the remarks and arguments made before the court by my learned friends who have spoken before me and by those on my left who will follow me.

I will now deal with the evidence against my first accused, who is No. 22, Pichen. Pichen was for a short time in No. 2 cookhouse and was then one of the S.S. men in charge of No. 1 cookhouse, and it is in connection with No. 1 cookhouse that most of the acts ~~xxx~~ alleged against him are supposed to have taken place.

Before I deal with the evidence against him at Belsen I would like to deal with one other matter, and that is the bathhouse at Dora. Two affidavits were produced by the prosecution, that of Jekel Gutman, affidavit No. 30, Exhibit 32, and Simcha Zamoski, affidavit 179, also Exhibit 32. They have identified Pichen as being an S.S. man at Dora and at Belsen; at Dora they say he was in charge of the bathhouse. If the court had not seen the prosecution witness Zamoski before them, having read the two affidavits of Gutman and Zamoski one might be excused for describing them as Siamese twins. The opening paragraph of their affidavits is absolutely identical, with the exception that Gutman says he was arrested by the Germans; Zamoski did not add "by the Germans." They are both the same age, both Jews, both arrested on the 15th November 1942, and from then onwards until their arrival in Belsen in 1945 they have been at identical concentration camps during absolutely identical periods. The dates and the years which they give for being in these other concentration camps are complete, but as to their arrival at Dora they are delightfully vague.

There is no allegation in the evidence before the Court against Pichen at Dora, but I have taken considerable pains to show that the allegation made against Pichen in this respect is completely false, because, as I have said, it is part of my case that the prosecution's affidavit evidence is completely unreliable. Kraft, who was in Dora from September 1943 till January 1945, says that during his stay at Dora he never saw Pichen, and he, Kraft, admits that if Pichen had been in the bathhouse he would certainly have seen him passing from the cookhouse to the bathhouse. Klippel in transcript 28 said he never saw Pichen in Dora, and Klippel himself was at Dora from October 1943 till the 5th April 1945. He says he first saw Pichen in the prison at Delle. Paul Krutzer, who was in Dora from January 1944 until the 5th April 1945, said he did not know Pichen. The witness Klitscho in Transcript 28, who worked in Dora from December 1943 until April 1945, said he had never seen Pichen. The photograph which showed Pichen was handed to the witness Klitscho and he was asked if he could recognise anyone on it as having been at Dora. As a matter of fact, Klitscho did identify one man as having been at Dora, but it was not the accused Pichen. Stefan Hemmann, (Transcript 21) who was at Dora continuously from October 1943 until April 1945, did not know Pichen. Pichen himself has testified that he never was at Dora and has never been in charge of the bathhouse.

The accused No. 16, Francisch, who says he met Pichen in Blechhammer in December 1944 and who says that Pichen there told him his life story, where he had been and what he had done, says Pichen never mentioned Dora and never said he had been in a bathhouse.

In my submission, the evidence is overwhelming that Pichen was never at Dora, and that Gutman's and Zamoski's evidence is false. In fact, Zamoski, having said that Pichen was at Dora and then at Belsen in his affidavit, in his oral evidence said that after Dora he had never seen the man again, nor did he identify Pichen in the dock, although his attention

had been directed to the bathhouse at Dora immediately before he came into the well of the court to carry out the identification.

I pass on to the allegation of the shooting outside No.1 kitchen on the day of the S.S. men's parade, on the 13th April. The prosecution's evidence is contained in the testimony of Sophia Litwinska and in the affidavit of Wajsbllux, page 167, Exhibit 89. In the affidavit of Wajsbllux the accused Pichen is directly implicated by name. In the oral testimony of the witness Litwinska, Pichen was not implicated by name, except she says the S.S. man in charge of No.1 cookhouse was responsible for the shooting.

If I may, Sir, I would like to point out certain substantial discrepancies between the oral and the affidavit evidence with regard to this alleged incident. Litwinska says that while the S.S. men were away on this parade on the 13th April one or two internees attempted to get vegetables from the pile outside. The affidavit of Wajsbllux says about 50 prisoners were stealing turnips. When the S.S. men returned from their parade and started firing Litwinska says the S.S. men were very near to the kitchen when the shooting started. The affidavit says the S.S. men opened fire from about 30 metres, firing as they ran.

The oral evidence discloses that eight or nine bodies were lying about the kitchen. The affidavit evidence says: "The total number shot by Pichen and Josef was between 10 and 15." Then, with the alleged incident still fresh in her mind, her attention having been directly brought to it by the prosecution, before the witness left the box she inspected the accused in the dock but did not recognise Pichen as being the man concerned in the incident - not because she did not know Pichen but because, in my submission, her attention had been directly brought to this incident before she left the witness box to make the identification. She did not remember Pichen as being the man concerned in that particular incident. Is it conceivable that she would not have accused him then and there when she was in court if, in fact, Pichen had been implicated in the shooting? In cross-examination I stood Pichen up before her and she did not recognize him, in spite of her statement that she would most certainly recognise the two S.S. men who were involved.

I enquired if either of the S.S. men had any physical deformity, with her attention still directed towards this incident. The court have seen the result of the wound in Pichen's left hand, the three fingers are stiff and permanently at right angles to the palm. It is a very obvious disfigurement, but the witness was unable to say whether or not any of the men she connected with the alleged incident had any physical deformity.

Pichen's evidence on this incident is that on the 30th April he received a telephone message that all the S.S. men were to go on to a parade. He locked up the cookhouse and he told the girls who worked there to wait outside until he returned. He went on to the parade, and during the parade he did not feel well, and he told Francioh who was on the parade with him about this, which fact Francioh confirms.

At the end of the parade he handed the key of the kitchen to his assistant cook, Jesph, who was incidentally not a Rottenführer, and Pichen then went on to his own barracks; he did not return to No. 1 kitchen that day. It is fairly reasonable, in my submission, that he should not do so.

We have heard what shifts were worked in these kitchens. The first one started early in the morning, sometimes at 3 o'clock, and worked on until 1300 hours. The second shift started about 1300 hours and went on until 10, 11 or even 12 o'clock at night.

If a parade had been called round about 11 o'clock or 12.30, when this S.S. men's parade was held, and Pichen had in fact been working from the very early hours of the morning, as he said he had, is it not reasonable that he would consider his own shift to have finished and hand the key over to the man who was responsible for working the second shift?

In my submission, the salient feature about the Prosecution's allegations is that this incident is supposed to have taken place on the day when the S.S. men had their parade. We have heard several times from the learned Prosecutor that in his submission all the internees at Belsen were very hazy about dates, but I submit that the day on which the S.S. men held their parade would be a most convenient peg indeed on which to hang any concocted story as, in my submission, the allegations contained in the testimony of Litwinska and in the affidavit of Wajsblum in fact are.

The next incident in which Pichen is alleged to have been involved is referred to in the affidavit of Stanislaw Halota, page 39, Exhibit "36". This deponent is supposed to have been in a party which was carrying soup containers from Pichen's kitchen to the women's compound. Here again this incident is supposed to have taken place on the 13th April. What is alleged is that two male prisoners started taking turnips from a pile outside the kitchen whilst Pichen was standing outside, and he saw the men taking the turnips. He immediately pulled out his gun and shot at both of them from a distance of about 25 metres. The two men immediately fell to the ground, and Pichen walked away.

This is supposed to have taken place about 12 noon. Four hours later two bodies were still lying on the ground. They were put on a stretcher; they were both dead; one body was hit with a bullet at the back of the neck and the other was hit under the right shoulder blade.

In my submission, to say the very least, from 25 metres that is absolutely first-class shooting, and Pichen himself says that he has never had much practice with a pistol.

I would refer in this connection to the additional evidence of Sofia Litwinska, when I cross-examined her. She said that she had no knowledge of any other shooting incident in which the S.S. personnel in No. 1 kitchen were supposed to be implicated. This incident in the affidavit of Halota is supposed to have taken place at the very time when Pichen was on the S.S. men's parade. The Prosecution will undoubtedly say that Halota has mistaken the date, but whether she has mistaken the date or not, Litwinska, who worked continuously in that kitchen never knew anything about this incident at all.

As regards this incident, Pichen himself denies that it ever occurred. He says that he never cooked for the women's compound, but Halota says that she was there with a party to take soup containers from Pichen's

kitchen to the women's compound.

You have heard his evidence, which is confirmed by several other witnesses, that he never carried a pistol whilst he was working in the kitchen. He says that he has never shot at any prisoners and he adds again that he went on the S.S. men's parade about noon on the 13th April.

My own submission as regards this incident is as follows: Firstly there is no identification that the two men who Pichen shot at were dead; four hours later two bodies were found outside No. 1 kitchen. There is nothing specific in the allegation of Halota to connect Pichen directly with these two bodies who were subsequently taken away. If in fact Pichen had shot at two men, it is extremely likely they would fall down and fox death, and Pichen is supposed to have walked away straight away. What is there to prevent them subsequently picking themselves up and disappearing?

Why did not the deponent go then and there to establish that these two men were in fact dead? Most providentially for the Prosecution's story she is the only one who saw the incident about noon and who was there on hand four hours later to ascertain that two men were dead, and to assist the Totenkommmando to put the bodies on to a stretcher. Is it not more than likely that she would tell the Totenkommmando that she had seen how this incident had happened? If she in fact did so, why is this the only affidavit or evidence which we have had on this particular matter?

Further, is it not very unlikely that two internees would attempt to steal turnips while Pichen was actually outside the cookhouse? Particularly is that so if the Prosecution's suggestion that it was the cooks' practice to be continuously sniping from these cookhouses at any internee who approached them is correct.

The incident alleged against Pichen is contained in the affidavit of Wajsblum, page 167, Exhibit "9". This incident is supposed to have taken place about three weeks before the British came. A man who was walking next to the wire separating No. 1 kitchen from the men's compound was searched by Pichen who returned to the cookhouse with some food he had found on him. He complained to the girls working in the kitchen that they had given this food to the man, and when they denied it he went back across the street to where the man was still standing by the wire and when he was 5 metres from him he pulls out his pistol and shoots him. The prisoner fell bleeding from the chest and the deponent was of the opinion that he was dead.

Pichen's evidence on this matter is again a denial that it ever happened. Three weeks before the arrival of the British Pichen in any case was not in No. 1 kitchen. From the 27th March until the 31st March he was in camp No. 2. He says that he never searched any prisoners outside kitchen No. 1, and the whole story itself, in my submission, is extremely unlikely.

Even if Pichen did see a man alongside the wire by the men's compound opposite No. kitchen; even if he did go over and search him - and the deponent gives no reasons why Pichen should suddenly take it into his head to suddenly go over - even if he did find food on him and returned to the kitchen and accuses the girls there and then walks back to the place where the searching originally took place, is it not most unlikely that the internee would still be there? All these internees, so the Prosecution tell us, know the blood-thirsty qualities of the S.S. men in charge of the cookhouses, and in my submission, if this story is true, if Pichen ever had searched an internee and found food on him, that internee would have been at the other end of the camp by the time Pichen ever returned from the cookhouse. It is a very unlikely story altogether.

Now generally on these shooting allegations. Ilse Forster (Transcript 35) who worked in No. 1 kitchen from about the 20th February of this year

until the liberation, says that she never saw Pichen shoot anyone either in or in the vicinity of No. 1 kitchen, nor did she ever hear that he had shot anyone. She confirms that Pichen kept his pistol in the cupboard which was locked whilst he was working in the kitchen.

Hilde Lisiewitz (Transcript 30) who worked in the peeling department in No. 1 kitchen from the 23rd March until the 30th March, again confirms that Pichen's pistol was locked in a cupboard. She never saw him shoot anyone from the kitchen and she said that she never heard that Pichen himself had shot anyone.

Before I finally leave the case of the accused Pichen, I would like to make some remarks on the Prosecution's contention that Pichen's appearance has changed since his photograph was taken. Zamoski did not recognise Pichen in the dock, but subsequently the Prosecutor very kindly invited the attention of the Court to Pichen's prominent ears and eyes, which appear, incidentally, equally prominently in the photograph. Why then, if there are these unmistakeable facial attributes, could not Zamoski and Litwinska recognise him? It was because, in my submission, their attention had been directed to a particular incident immediately before they left the witness box, a particular incident in which it was hoped that Pichen would be implicated. When they come down to make the identification, the man whom in their mind they did implicate with the particular incident they were supposed to give evidence on, they did not see, because that man was not Pichen.

The Prosecution witness, Anni Jonas (Transcript 7) had not the slightest difficulty in recognising the accused Pichen. She said he was the man in charge of No. 1 kitchen in Belsen, but she makes no allegation against him, and presumably the Prosecution's contention is that it was very easy for her to recognise him.

In the case of Litwinska, who had indirectly implicated Pichen in an alleged shooting but had failed to identify him in Court - after two chances, incidentally - it was, of course, very difficult for her to identify him, because his appearance has changed so much. Has his appearance in fact changed? The prominent eyes are there, the over-hanging brow, the thin pointed chin, all of which appear in the photograph and are equally apparent on the man now.

As regards the moustache, upon which the Prosecution have made so much play, there is quite definitely, in my submission, a trace of a moustache of the same shape on the photograph by which it is alleged these witnesses identified the man. Why should the Prosecution witnesses have this difficulty in identifying the man, whom they allege to be guilty, when they come into this Court? - because in my submission it is quite obvious that Pichen is not the man that they themselves identified in their mind with the man who they allege committed certain shootings.

In any event, if it is alleged that Pichen has intentionally changed his appearance, is the type of moustache that he now wears the type that one would grow if one intended to change one's appearance?

The Prosecution, in my submission, cannot have it both ways. Pichen's appearance has either changed so considerably that a witness who saw him commit certain atrocities cannot now recognise him, or his appearance has not in fact changed to such an extent as to render identification difficult, and the man whom the Prosecution allege to be guilty of these shootings is not in fact Pichen. I would again remind the Court that Anni Jonas had not the slightest difficulty in recognising the accused.

The evidence against Pichen is, I maintain, of an extremely doubtful character; it is conflicting in many respects and it is fantastic and highly improbable in others. The two witnesses who were before the

Court and by whose evidence the Prosecution seek to implicate Pichen have not identified him as the man concerned in the stories they have produced in Court. What could be more unsatisfactory? The essential of any murder charge made by a witness is that the perpetrator should be recognised.

That that is not done - and the witness had more than a fair opportunity - is not the obvious conclusion to which the Court must ultimately come that the allegations are completely unfounded, or that Pichen is quite definitely not the man concerned? The submission I place before the Court is that there must be very grave doubts in their minds that these allegations against Pichen are true; far more than a reasonable doubt that the Prosecution have proved their case, and on those grounds I ask for an acquittal against Pichen.

The next accused I have to deal with is No. 23, Walter Otto. The only specific allegations against him are contained in the affidavit of Stojowska on pages 149 and 150 of the affidavit book.

Before I go into the details of the alleged beatings contained there, I would like, with the Court's permission, to break down the dates of the deponent's visits to various prisons and concentration camps. This is to try to establish the very earliest she could have been in Belsen camp.

She said that she was arrested on the 17th May, 1943, and spent six weeks in Warsaw prison, which took us to the 27th June, 1943. She then went to Lombury prison for five months, which would take us up to the 28th November, 1943, then to Berkenau, and on the 4th December, 1944, she was transferred to the men's camp for two weeks, which would take it up to the 16th December, 1944. She was then sent to Cracow prison for six weeks, and after that she went to Belsen.

The breaking down of those dates shows that at the earliest she would arrive about the 29th January, 1945, at Belsen camp.

Briefly the allegations against Otto are that he beat the deponent Stojowska outside block 213 in Belsen. She says he was an unterstabsfuehrer and a blockfuehrer. Five or six days after her arrival at Belsen she went to block 213, which was empty, to get a bed, and whilst she was attempting to take it away the accused is supposed to have beaten her with a big stick.

As regards the second incident which is supposed to have taken place in block 201, the deponent says she lived in block 201 which was divided into two parts, each of which had its own block leader. The deponent was one block leader and a Hungarian Jewess, aged about 50, was the other. Then two days after the first incident Otto is supposed to have gone in there and very severely beaten the Hungarian Jewess with the result that she had to stay in bed for several weeks.

The evidence adduced by the Defence in this case comes from several witnesses. Ada Linko, a Prosecution witness, says that Otto never was a blockfuehrer in the women's camp (Transcript 6). Kramer (Transcript 20) says that S.S. men on the administrative staff could not also be blockfuehrers. Otto himself says that he never was a blockfuehrer, as it would be impossible for a man who did his job to be a blockfuehrer.

As regards the incident outside block 213 Otto says that he never went into the women's compound until the beginning of March, and when he did go in block 213 formed part of the isolation wards for typhus cases. He says he could not himself have gone into or near that block without the special authority of a camp doctor, which he says he never had.

As regards the incident in block 201, he says that the first time he went into block 201 was about the 10th or 11th March, when he had to do

some repair work. The blockaltester at that time, he says, was a Polish woman called Aldona, and he himself never saw a Jewess who was a blockaltester.

Generally he says that he has never beaten anyone in Belsen, and in my submission the other evidence which was adduced most definitely confirms that general statement.

Johanne Roth (Transcript 38) says that block 213 was occupied by Russians and Poles from the 27th January for the next six weeks. She said there never were any beds outside block 213.

The accused Staroska, who was lageraltester from the 5th or 6th February of this year, says that block 213 never was empty and she confirms that it subsequently became an isolation ward. She said particularly that S.S. men were not allowed to enter the isolation ward without the permission of the camp doctor, and she has never seen anything take place outside block 213.

As regards the general allegations of beating, Starostka says she would have heard if a blockaltester had been beaten, and she adds: "I would certainly have heard about it if a blockaltester of block 201 had been beaten, because she would have come to me and complained", and she said that she never heard of such an incident.

The accused Kopper, who says that she arrived in Bergen-Belsen about the 27th or 28th December, says that soon after she had arrived - at the beginning of January she says - she heard that a Slovakian Jewess who was a blockaltester, was beaten, but she said that she never heard that Otto had beaten anyone, and she adds, incidentally, that Otto was very good to the prisoners. She confirms that block 213 was never empty whilst she was there and that beds were very scarce.

In my submission it is quite clear that these two incidents are concocted stories, for the simple reason that they do not match up with the general evidence, the facts about the concentration camps as we know them.

The first time Otto went into the concentration camp he could not go near block 213. Block 213 quite obviously was empty and, in my submission, there never were any beds outside it.

As regards the second incident, I submit that the witness has heard, as Kopper has heard, of the beating of a Slovakian Jewess, but that took place about the beginning of January and long before Otto had ever got to Belsen.

There is one other point, and this is the final point with regard to Otto. Otto himself was in Auschwitz from October, 1940, until January of this year. The Prosecution say that they can prove a methodical course of conduct, a systematic course of conduct, by any accused who was not at Belsen for a great length of time, in order to show that it was part of the S.S. routine to ill-treat prisoners in any camps, and yet there is not a single instance, no single allegation, of any ill-treatment whatsoever against Otto at Auschwitz, although he is, as one might call it, one of the old originals.

As regards Otto himself, my submission is that the evidence will not withstand critical analysis. It is not convincing in respects and if it is not a complete fabrication, in my submission, with the Defence evidence it would appear to be. It is not convincing from convincing and cannot, in my submission, be accepted as evidence that Otto is guilty of these beatings beyond reasonable doubt. In that case I ask for an acquittal.

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As regards Otto himself, my submission is that the Prosecution's evidence will not withstand critical analysis. It is inaccurate in many respects and if it is not a complete fabrication - which on comparing it with the Defence evidence it would appear to be - at any rate it is very far from convincing and cannot, in my submission, persuade the Court that Otto is guilty of these beatings beyond a reasonable doubt. Consequently, in his case I ask for an acquittal.

The third accused whom I represent is No. 25, Stofel. The evidence against him is written evidence only, and is contained in the three affidavits of Gruhmann, page 27A, Exhibit "31"; the affidavit of Poppner, page 257, Exhibit "107"; the affidavit of Mocks, page 259, Exhibit "108", and the unsworn statement of Adolf Linz, page 234, Exhibit "55". It is incorrect, in fact, to say that the unsworn statement of Linz contains any allegations against Stofel - it does not. But it does relate to this march from Klein Bodungen to Belsen. It implicates Dorr, as a matter of fact.

THE PRESIDENT: It merely deals with the march?

CAPTAIN FIELDEN: It is a very short one and it says that on the march Dorr shot 13 or 14 prisoners.

The Court has had an opportunity of testing the evidence adduced by the Defence in regard to this march from Klein Bodungen to Belsen and, in my submission, in the main essentials - and apart from certain minor discrepancies which will arise when people are telling the truth - that evidence has withstood all the Prosecution's attempts to break it down.

In certain respects the evidence of the Prosecution and of the Defence agrees. It is agreed that a party of concentration camp prisoners from Klein Bodungen - it was a small working camp under the central administration of Mittelbau or Dora - set out on the 5th April under the charge of S.S. guards who were commanded by Stofel.

None of the Prosecution's witnesses agree as to the number of prisoners in the transport when it started off, but I submit that the Court should accept the oral evidence of the man who should know, the man who held the roll call before the prisoners started off, and who says that there were 610. This is confirmed by the oral evidence of Dorr, who was a member of the guard and Stofel's second in command.

Allegations are made by the prosecution of various shootings on the route, principally by the accused Dor assisted by certain prisoners who acted as functionaries. Not on one single incident, however, did the two affidavits which contain substantially the whole of these allegations agree; nor do they agree in many other respects.

The only affidavits with which I am going to concern myself here are those of Gruhmann and Poppner. The affidavit of Mocks is merely corroborative of that of Poppner.

Gruhmann says the number of prisoners which started off was about 650. Poppner says there were 613. As regards the shooting after the first day's march, by which time the transport had arrived near Osterode, Gruhmann says Dor shot two of six men from a party from Nordhausen. They were shot near a stable and the bodies were buried near there. Poppner says Dor shot three men who had been in a distressed condition on the morning of the 6th. He shot each man twice and they were buried in a shallow grave near the barn where the internees were bivouaced. Gruhmann says on the morning of the 6th Dor shot the remaining four men out of the six men in the Nordhausen party, and the bodies were left under the straw in the stable.

Gruhmann says that all the prisoners had been able to keep up the pace during the first two days of the march. Poppner says two men collapsed during the first day.

Then, as regards the other shooting incidents alleged to have taken place on the march, Gruhmann says: "I saw him" - that is Dor - "shoot at least 46 prisoners in all. Other SS did not take part". Poppner himself only refers to shootings on the first two days. He does not allege that there were continuous shootings all along the line of march. Gruhmann says that nine prisoners were shot at Belsen Station. Poppner makes no reference to that at all. Gruhmann says some 65 men were killed during the march. Poppner says: "I myself heard before we got to Belsen that 36 were not accounted for". Gruhmann has said that the route which the transport took was through Hertzberg, Brunswick, Peine, and Celle, and adds at the end of his affidavit: "I think I could point out the various places at which men were shot by Dor and where the bodies can be found". This aspect of the matter has already been referred to by Major Cranfield this morning. If the prosecution are so certain of their case as regards this march to Belsen, why have we not had evidence before the court as to where those bodies are, who found them, and how they were found?

My friend Major Cranfield said that before this trial started all the places at which this transport called and at which it is alleged these various shootings took place, were within the British Zone. I will go further and say that all these places are still within the British Zone: Hertzberg, Osterode, Seesen, Salzgitter, Brunswick, and Ohoff, are all within the British Zone, yet the only concrete substantial evidence in my opinion which has been produced of any shooting of any prisoners on this transport has been produced by the defence.

Gruhmann says that he could go back along the route and show the places where those bodies were buried. At one particular point, at any rate, he would be going a considerable way out from the route which the actual transport took. He says the transport went through Peine. The evidence before the court is that the transport did not go through Peine.

The affidavits of all those three deponents, Gruhmann, Poppner, and Mocks were not apparently read over to them before they were sworn. It is certified at the bottom of each affidavit that the above is a correct translation of the evidence given by the said deponent, and it is signed by the interpreter. Well, we have heard from Major Smallwood and Colonel Champion as to how these affidavits were obtained.

It is quite definitely established, in my submission, that the original statements which were not made on oath were subsequently incorporated into an affidavit in which, Major Smallwood himself says, it was sometimes necessary to make alterations before they were sworn by the deponent.

As regards these three affidavits, it is obvious that they were not read over to the deponents before they were sworn. The only evidence as to their truthfulness, which the court has, is this statement by the interpreter that the affidavit is a correct translation of the evidence previously given by the deponent. In my humble submission, these three affidavits are very suspect, and they should not be received by the court without considerable reserve.

A very striking fact about the allegations made by the prosecution as regards this march is that there is no mention of any shooting of prisoners at Gross Hehlen, where the accused together with other witnesses confirm that certain prisoners were shot. That is most suspicious, in my submission, because the weight of the evidence, substantial though it is, does show that certain prisoners were shot near the village. The court has heard the evidence of the Burgomaster who was present when the bodies of three men dressed in concentration camp clothes were disinterred. They have heard from him and other witnesses from the village that this was the only party of concentration camp prisoners through Gross Hehlen in April of this year. The only occasion when it is definitely established that prisoners were killed is not mentioned by any of the prosecution witnesses. Why is that? In my submission the allegations of the other shootings are complete fabrications. I submit the deponents knew of this shooting at Gross Hehlen, but because they knew it was not done by SS guards commanded by Stofel they took the opportunity of accounting for the losses which occurred at Gross Hehlen by making up stories of other shootings on the line of march. Unfortunately because they are made up, the stories produced by the prosecution do not agree as I maintain I have shown by comparison of the contents of the affidavits of Gruhmann and Poppner. In fact, the stories are quite contradictory and, as a result, the prosecution's affidavits, in my submission should not be accepted by the court as against the oral evidence produced on behalf of the defence.

I do not propose to tell the story of the march because the court have already heard it several times. I do not propose either to go through the evidence on behalf of Stofel in very great detail. His oral evidence and that of other accused and witnesses on his behalf has been examined and inspected in very great detail and with considerable thoroughness. As a result of that examination it would appear that there are certain discrepancies in his evidence with which I should now like to deal.

The first is the matter of the evidence of Neumann and Steinbusch as regards the destination of the transport. They say that on the 4th April the accused Stofel and Dor met them in Mittelbau and gave them a lift to Grosswerter. There these two women were told that they had to go on to Belsen. They say when they mentioned this the accused said: "Well, just carry on with us and come with us", their impression being that the journey was going to be continued by road. I suggest what really happened was that these women were given a lift from Mittelbau to Grosswerter by Stofel and Dor; they were given orders at Grosswerter to go to Belsen; and, as they were far from well, just having come out of the CRS and were, as they considered, in no fit state to walk, they were very glad to have a lift even over any part of the journey. Stofel knew that the immediate destination of his transport was Hertzberg and, probably being glad of some feminine company, agreed to take these two women to Hertzberg at least, and probably intended to arrange to carry them further with the transport by rail and to leave them at the nearest station to Belsen.

After the bombing of Hertzberg station on the morning of the 5th April, the following day, Stofel decided to march his transport to Belsen, and then, and only then, did his transport become in any way connected with that camp. That, in my submission, accounts for the impression which these two women had that on the day they met Stofel and Dor, the 4th April, Stofel and Dor knew that they were going to Belsen.

The next point I would like to discuss is the manner in which the prisoners and the guards left Gross Hehlen village on the evening of the 10th April. Various differing descriptions have been given on that matter, but is it not possible, in fact, more than possible and extremely probable, that the descriptions which have been given of how the prisoners left the village are all true? We have heard that there were about 600 prisoners and the Burgomaster says he saw them in a heap and crowded, not in formation. Neumann says that the prisoners were lined up and chased away. Erika Ceconi, who was the civilian witness from the local inn at Gross Hehlen, said that the prisoners were in good order but seemed tired when they left. The witness Steinbusch said the prisoners had to fall in very quickly and march off at the double. Stofel himself said there was no question of a proper parade, and the SS Field Unit took the prisoners away at the double. I suggest that if such a large body of people were sent away in a hurry, independent witnesses would see different aspects of the incident. Some of the prisoners would be lined up properly and the tail end would very conceivably be hurrying along after than in no sort of order at all. As a result, some would move out at a normal pace and others might be chasing up to catch them.

Several witnesses, including Erika Ceconi, confirmed that shots were fired before the prisoners moved off - in order, in my submission, to hurry the prisoners into forming up in the same sort of order. What is quite definite and apparent from the evidence is that after their arrival at Gross Hehlen, and whilst the prisoners were being fed, the transport was ordered to move off out of the village by the local commander. They were told to move on because it was a front line area. After a certain amount of objection on the part of Stofel, the prisoners were taken away in the charge of, and under the command of, the men of this Waffen SS Unit stationed in the village. It is whilst the prisoners were so controlled and guarded that there is the only substantial evidence, in my submission, that any prisoners were shot.

I submit that Stofel cannot be held responsible for the safe keeping of the transport from the time it left the barn where the prisoners were about to be fed until the time he took over command at the airfield. Consequently the deaths of those prisoners cannot be laid at his door. It is quite apparent, in my submission, from the evidence that the officer and the men of the Waffen SS unit who were in charge of the prisoners during that time until they handed them over to Stofel at the airfield, were quite definitely responsible for them. In every way they took the command out of Stofel's hands, and it is upon their heads should be laid the blame for the death of such of the prisoners who were killed during that time.

The prosecution suggested at one stage that there never was a Waffen SS unit in Gross Hehlen during the material time, but I consider there has been very ample evidence from witnesses living in the village that in fact there was.

One particular aspect of the accused's evidence which the learned prosecutor has pretended to scorn is that of his refusal to move the prisoners on, and not having immediately been put under arrest or having been shot for refusing to obey an order. I ask the court to put themselves in the position of that Obersturmführer in Gross Hehlen.

He was a full lieutenant responsible for the defence of the village who was suddenly presented with the influx of 650 odd prisoners and guards into his defensive locality. We have heard that the battle was fast approaching, and the court has heard that gunfire could be heard that night. The lieutenant would be only too anxious to rid himself of this tremendous impediment to his fighting efficiency. How unlikely it is that he would arrest or shoot the very person he would naturally rely upon to remove this impediment permanently from the area. He would be only too glad to get rid of the prisoners and see the last of them. I submit that that would be the reaction of any officer in similar circumstances, if his company area was invaded by a horde of prisoners as it was in this case.

I should like to consider shortly the events at No. 2 Camp in the Wehrmacht Barracks where the transport eventually moved, and when it was handed over on the 11th April. A roll call was taken of the number of prisoners which was found to be 590. The accused is the man who should know and there is no reason to disbelieve him, especially as he cannot specifically account for the absence of the twenty. How he does account for that difference the court has heard. Five men escaped at Salzgitter, where a roll call was taken, and the five men absent were actually known to the accused as they were functionaries. The remaining fifteen he says were shot or escaped at Gross Hchlen. The court has heard that about eight bodies were seen outside the village and, judging from the other evidence, there was plenty of opportunity and incentive to the prisoners to escape. Never before had they been so close to the front line and to the people who would ultimately approach and rescue them from slavery.

There is a second conflict of evidence regarding the report which Stofel made to Hoessler in No. 2 Camp, and the view which I invite the court to take on that evidence is this. Stofel did in fact report the shooting to Hoessler, but it is reasonable to suppose that Hoessler had forgotten about Stofel's reporting it to him. After all, I can imagine that Hoessler was a fairly harassed man during those last few hectic days before the arrival of the British troops, and he would be far more likely to be concerned in looking after the lives of 15,000 prisoners rather than the disappearance of 20 in some obscure village. The first recollection Hoessler had was when he himself was a prisoner with Stofel and Dor and another person came into the room and asked Dor who ordered the prisoners to be shot. When Hoessler questioned Stofel and Dor on that point they both told him that they did not know. They were referring to the shooting by the Waffen SS. They did not know who had shot the prisoners. That, I submit, is a reasonable explanation of the murder and is in line with the testimony of Hoessler, Dor, and Stofel and Hoessler's affidavit on page 200.

Stofel has told the court that he himself has not hear nor seen any prisoners shot by his guards. Nor did he give any orders for internees to be shot. If the court do not accept the evidence of the defence about this march, I ask them to accept that Stofel never knew of any incident where his prisoners were shot, except at Gross Hchlen, and that he was never a party to such shooting, remembering particularly there is not a single shooting specifically alleged against him. In fact, Gruhmann states in his affidavit that Stofel did not take part in any shooting.

The next point to which I would draw the attention of the court, so far as Stofel is concerned, is the question of the charge. The inclusion of this accused in the Belsen charge is, in my submission, quite wrong. He was never in the concentration camp proper, as we know it, only the day he went with the court as a prisoner when the court viewed the camp. To suggest that he was ever a member of the camp staff is equally erroneous.

Several witnesses before the court have stated that the whole of Dor was to be transferred to Neuengamme, including Hoessler, who was the man who gave the orders for the evacuation of Klein Bodungen to Stofel. As far as Stofel is concerned, all that he knew was that he would march his prisoners to Hertzberg where they would entrain for their final destination which was never specifically ordered, although he says there had been a rumour that they were going to Neuengamme. The court knows the sequel, how Hertzberg Station was bombed and put out of action, and Stofel decided to march to Belsen.

He arrived on the 8th and never left there until he was arrested on the 16th April. At what stage, in those circumstances, the prosecution allege that Stofel became a member of the concentration camp staff and responsible for the well being of prisoners interned therein, I am at a loss to understand. There are no allegations of ill treatment against Stofel after his arrival at Bergen. If one brings in the concerted action aspect and rather reverses the application of it, this is what happens as regards the case of Stofel being included in the Belsen charge.

Supposing there had been no allegations of ill treatment at Belsen itself. By including Stofel in the Belsen charge the prosecutor would still hold any members of that concentration camp staff responsible for any of the alleged shootings on the march from Klein Bodungen. The prosecutor would bring in the concerted action aspect. He would allege that Stofel was a member of a unit or group, and could, as a result, allege that all the people in Bergen-Belsen concentration camp staff were responsible for shootings at, say, Osterode, a town, which probably the majority of them had never even heard about. In my submission, that situation is quite ludicrous.

Before I conclude I would like to point out to the court that so far from ill treating the prisoners, there is evidence before than that in fact all three of my accused have helped the internees with whom they came into contact, and have tried to alleviate, so far as they could, the conditions under which the prisoners had to live.

I should like finally to sum-up on behalf of all the accused I represent. The burden of proving beyond a reasonable doubt the allegations set out in the charge-sheet is upon the prosecution. It must be proved to the satisfaction of the court as reasonable men that firstly my accused were members of Belsen concentration camp staff concerned together in ill treating internees; secondly, that my accused took part in a concerted action against the internees, being members of that unit or group; and, thirdly, that they are personally and individually guilty of ill treating the internees at Belsen concentration camp. In all these cases it must be proved, not merely as a whole, but the particular victims were Allied Nationals and known to the perpetrators to have been so. It is my humble submission that not under one of those heads have the prosecution proved their case, and I ask the court to give to my three accused the acquittal to which they have shown themselves entitled on the charge now before the court.

CAPT. CORDALLY: As I do not think I should be able to complete my remarks in regard to the accused Schreirer, who is the first of my accused, this evening, I propose, if it is convenient to the court, to deal first of all with the accused Barsch.

The accused Barsch is also charged with other people in the dock with causing the death of many Allied Nationals interned in the Belsen concentration camp, and with causing physical suffering to many more Allied Nationals interned there.

As proof that Barsch was in fact an accomplice of the other members on this charge, the prosecution have produced two affidavits; the affidavit of Silberberg, which you will find on page 133, and the affidavit of Miriam Winter, which is on page 177. That is the evidence on which, as far as Barsch is affected, the charge is based. That is the only evidence against him. I say that advisedly because in the first place had those defendants not sworn that evidence against him, Barsch would never have been here to-day.

Secondly, although I have produced in his defence evidence to prove that he was a member of No.2 Camp at Belsen, his activities there were so blameless that they could never have been made the basis of such a charge as this.

I would invite the court just to look for a moment at these two affidavits. It appears that both defendants are quite young girls, one being aged 20, that is Silberberg, and the other 23. They have both been in concentration camps for a number of years. It would also appear that both affidavits were sworn on the same day, the 11th June, which is nearly two months after the camp was liberated. They are also in almost identical terms. Each defendant when making her affidavit refers to the other one as also being present when the incident happened, and they also refer to a third person who should have been a very much better witness, because this third person was the girl to whom they say Barsch made a remark asking her if she was thirsty. That third person would, in fact, have been a very much better witness, but she does not appear to have come forward or, at all events, if she has, she has not given evidence against Barsch.

It also appears that both affidavits refer to Barsch as the kitchen chief of No.1 kitchen on or about 13th April. I submit that this is vital.

These internees had been in this camp for quite a long time - five months - and they should know which kitchens they are talking about. They should also know who was the kitchen chief.

The time and the date to which they refer, the 13th April, is further qualified in one of the affidavits, specifically described as being "Shortly before the English arrived". I submit that that must be taken to be either that day or the day before or the day after; at the very most two days. The 13th April until the British arrived was only two days, and the arrival of the British must have been the one outstanding day in the recent lives of these internees.

I submit that when they say kitchen No.1 they must be referring to kitchen No.1 and not to any other kitchen, and that they must be referring to a time, within a day or two at the very most, of the 13th April.

Furthermore, of course, these affidavits were made at fairly late stages in the investigation. They were made before Col. Champion. The Court is surely entitled to assume that Col. Champion did in fact make sure they were referring to kitchen No. 1 before he allowed them to swear that.

The prosecution witness, Litwinska, says that she was working in kitchen No. 1 at that time. She says that she was working in kitchen No. 1 during all her time in Belsen except for one or two days in kitchen No. 2 when she first arrived there. She says she is quite certain that Barsch was not at that time, surely before the British arrived, one of the S.S. men at all connected with kitchen No. 1. I submit that Litwinska should know. She was working in that kitchen and she should know. That evidence from one of the prosecution witnesses must, I submit, raise the gravest doubts about the affidavits of Silberberg and Winter.

Further we have the evidence of Pichon who has admitted to being the kitchen chief of No. 1 kitchen at that time, and he says that Barsch was not at any time in No. 1 kitchen, and he also says he was in a position to know that Barsch was not at the relevant time on the staff of any of the Belsen kitchens.

There is also the evidence of Ilse Forster, the aufschorin in kitchen No. 1. She says he was not in that kitchen either and had no connection with the camp.

The identification of Barsch was carried out by photograph; there is no evidence that the deponent saw the man at all. In the photograph which the Court has seen you will probably recollect he is dressed in sort of hospital clothing, in what looks like pyjamas. I am going to submit that if these two deponents had come here they probably would not have been able to swear that Barsch was the man whom they saw shorting at Belsen at all. I am going to submit that this really is a case of mistaken identification caused through not a very likeness of a photograph. There is no evidence that they saw him at all, that they were ever confronted with him. The identification was carried out by photograph and I submit it was a mistake.

With reference to the evidence which has been called for the defence I would ask the Court to say that it is proved beyond all reasonable doubt that at that time when this incident is supposed to have happened Barsch was a medical orderly in No. 2 camp. That must follow from the evidence of Dr. Schmidt, Dr. Kurzko and also the witness Emile Klitscho, who was called by Major Cramfield on behalf of the accused No. 12. I also ask the Court to say that it is proved that before he came to Belsen he was a medical orderly in Dora. That point is also proved by Emile Klitscho and, to a certain extent though not, I admit, quite, by Dr. Kurzko. Dr. Kurzko said he could not really swear to the circumstances in which he had last seen Barsch but he thinks it was at Dora in connection with the hospital. Not only was he a medical orderly in No. 2 camp, but also the evidence of both doctors proves that he was sick at that time; he was suffering from some kind of stomach disease and both of them say that he was sick.

Barsch was working on the medical staff of these two doctors and what they say about him must carry, I submit, very great weight indeed with the Court. Schmidt says that he was a good medical orderly and that he knew how to dress wounds. He also says he had opportunity to test him; that he helped prepare the two hospital blocks. He also said that he never had to look for him without being able to find him, and that he never gave him a job to do which was not carried out to his, Dr. Schmidt's, satisfaction.

This small party of two doctors, the driver, whose name, as far as I can recollect is Grotzky, the medical orderly Besemer, and another man whom Dr. Schmidt says is Barsch and whom Dr. Kurzko cannot remember who it was but he does say it was another man, appears to have gone up to Nouengambo.

There is a certain amount of vagueness in the evidence about the date of this trip to Neuengamme, but what I submit does emerge is that they left at night to go to Neuengamme, during the night making the journey of between 18 and 24 hours, and spent a matter of six or possibly eight hours in Neuengamme and arrived back in the following evening. I do not think I have got it quite right; I think what it really means is they left Neuengamme in the early morning and arrived at Belsen the same day. In all they seem to have been absent from Belsen for 48 hours.

They are all, as I say, vague about dates, but I think it is established that the day which they returned to Belsen is almost certainly Friday, Friday afternoon. This is the day on which the shooting is supposed to have taken place. Could it have happened a day or two before? Certainly not. It could not have happened a day or two before, if Barsch went up to Neuengamme as Dr. Schmidt has said he did.

Could it then have happened after he came back? I submit there are two reasons against it. First of all the evidence of Dr. Schmidt that Barsch was continuously employed as a medical orderly in Camp No. 2 preparing these hospital blocks and that he carried out all the work that was asked of him. Secondly the evidence of Dr. Schmidt and also the accused Schmitz that Camp No. 1 was then out of bounds to personnel of Camp No. 2 and they could not get in there even if they wanted to. Barsch was ill and was suffering from stomach disease, gastritis, or something of that sort, and I submit that that in itself makes the perpetration of this particular crime the most unlikely and incredible in the world.

Can the Court really imagine that a man who was suffering from stomach disease would make the journey down into Camp No. 1, go into a kitchen, shoot at people with a revolver, and then make that horribly callous remark: "Well, if you are thirsty go and drink their blood". I submit that that is so improbable that no matter what we think of the S.S. you cannot believe that.

Finally I will say that the case produced by the prosecution against Barsch is a very weak one indeed, that it has been destroyed very largely by the help of the prosecution witnesses and the part there is left has been disposed of completely by the evidence which has been called in the defence of Barsch. He is supposed to have been a kitchen chief, but it has been proved amply that he was not a kitchen chief; he was in fact a medical orderly and medical orderlies in the S.S. carried a distinctive badge very much like our own, a sort of snake thing. The description does not fit him at all and I ask the Court to acquit him.

That is all I propose to say on behalf of Barsch and now, Sir, I do not know whether this will be a convenient moment to adjourn?

THE PRESIDENT: Yes.

(At 1700 hours the Court is adjourned until 0930 hours 10 November, 1945.)

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